No. 87-963-CFX
Status: GRANTED

Title: Robert L. Hernandez, Petitioner
v.
Commissioner of Internal Revenue

Docketed:
December 11, 1987

Court: United States Court of Appeals
for the First Circuit

See also:
87-1382

Counsel for petitioner: Graetz,Michael J.

Counsel for respondent: Solicitor General

Entry	Date	Note	Proceedings and Orders
1	Oct 5 1987		Application for extension of time to file petition and order granting same until December 12, 1987 (Brennan, October 6, 1987).
2	Dec 11 1987	G	Petition for writ of certiorari filed.
4	Jan 12 1988		Order extending time to file response to petition until February 12, 1988.
5	Feb 17 1988		Order further extending time to file response to petition until March 14, 1988.
6	Mar 14 1988		Brief of respondent Commissioner of IRS filed.
8	Mar 23 1988		REDISTRIBUTED. April 15, 1988
9	Mar 24 1988	X	Reply brief of petitioner filed.
11	Apr 18 1988		Petition GRANTED. Justice Brennan and Justice Kennedy OUT.
			**********
13	May 4 1988		Order extending time to file brief of petitioner on the merits until July 2, 1988.
14	May 14 1988		Record filed.
		*	Certified copy of original record received from US Tax Court.
15	May 18 1988		Record filed.
		*	Certified copy of C. A. proceedings, 4 volumes, received.
16	Jun 8 1988		Order further extending time to file brief of petitioner on the merits until July 7, 1988.
17	Jul 7 1988		Brief of petitioner Robert L. Hernandez filed. VIDED.
18	Jul 7 1988		Joint appendix filed. VIDED.
19	Jul 7 1988		Brief amicus curiae of Council on Religious Freedom filed. VIDED.
20	Jul 7 1988		Brief amici curiae of American Jewish Congress, et al. filed. VIDED.
21	Aug 2 1988		Supplemental brief of petitioner Robert L. Hernandez filed. VIDED.
23	Aug 3 1988		Order extending time to file brief of respondent on the merits until September 6, 1988.
24	Sep 2 1988		Brief of respondent Commissioner of IRS filed. VIDED.
25	Sep 13 1988		CIRCULATED.
26	Sep 17 1988	G	Application (A88-231) to extend the time to file a reply brief from October 3, 1988 to October 20, 1988, submitted to Justice O'Connor.
27	Sep 19 1988		Application (A88-231) granted by Justice O'Connor extending the time to file until October 13, 1988.
28	Sep 30 1988		Set for argument. Monday, November 28, 1988. This case

No. 87-963-CFX

Entry	Date	Note	Proceedings and Orders
			is consolidated with 87-1616. (4th case) (1 hr.)
29	Oct 13 1988	X	Reply brief of petitioner Robert L. Hernandez filed.
30	Nov 28 1988		ARGUED.

87-963

No. 87-

Supreme Court, U.S.
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DEC 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Commissioner of Internal Revenue incorrectly interpreted Section 170 of the Internal Revenue Code of 1954 in reversing seven decades of prior IRS policy and disallowing charitable contribution deductions for payments made by Members of the Church of Scientology solely to participate in religious services of their faith.

2. Whether denying charitable contribution deduction under Section 170 for payments by Scientologists to participate in their faith's religious sacraments violates the religion clauses of the First Amendment.

RULE 21.1(b) LIST OF PARTIES

In addition to the named petitioner, Robert L. Hernandez, other parties who will be bound by the judgment in the court below are as follows:

1. Richard L. Best
2. Michael R. Carlson
   Martha A. Carlson
3. David Everson Dyer
4. Evo J. Gramolini
   Dorothy A. Gramolini
5. John Cutter Hearsey
   Polly R. Andrian
6. Bernard Milton Percy
   Carolyn Bell Percy
7. Robin A. Robinson

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87- ——

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner Robert L. Hernandez respectfully prays that a writ of certiorari issue to review the judgment and decree of the United States Court of Appeals for the First Circuit entered in the above-entitled matter on June 1, 1987 and the order of that court denying the petition for rehearing entered on July 15, 1987.

OPINIONS BELOW

The opinion of the court of appeals in this matter is reported at 819 F.2d 1212 and is reprinted in the Appendix to this petition (1a).[1] The order denying rehearing

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[1] References in this petition are indicated as follows:

To the numbered pages of the Appendix to this petition (——a); To the volume number and numbered pages of a four-volume Stipulated Record on Appeal, filed in the court below (Stip. Rec. ——

is not reported but is reprinted in the Appendix (30a). The opinion of the United States Tax Court in the case designated by the parties as providing binding factual and legal findings in this case is reported as *Graham v. Commissioner*, 83 T.C. 575 (1984) and is reprinted in the Appendix (31a). The Order and Decision of the Tax Court in petitioner's case is also reprinted in the Appendix (43a).

JURISDICTION

The judgment of the court of appeals (for which jurisdiction was invoked under 26 U.S.C. § 7482(a)) was entered on June 1, 1987 and a timely filed petition for rehearing and suggestion for rehearing *en banc* was denied by order entered on July 15, 1987 (30a). By order dated October 6, 1987, Justice Brennan ordered that the time for filing this petition be extended to and including December 12, 1987 (42a).

The jurisdiction of this Court to review the judgment of the First Circuit is invoked in accordance with 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

Internal Revenue Code of 1954 (26 U.S.C.) § 170—Charitable, etc., Contributions and Gifts [2]

(a) Allowance of deduction.

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection

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——); To the numbered pages of the Supplemental Appendix filed with petitioner's main brief in the court below (SA ——).

[2] Only those portions of 26 U.S.C. § 170 and 26 U.S.C. § 501 relevant to the discussion in this petition are set forth here.

(c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

* * * *

(b) Percentage limitations.

(1) Individuals.—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.—Any charitable contribution to—

(i) a church or a convention or association of churches.

* * * *

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

* * * *

(c) Charitable contribution defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of:

* * * *

(2) a corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

References to Title 26 United States Code are to the Internal Revenue Code of 1954, which was in effect when the tax returns at issue in this case and related cases were filed and when the Commissioner's notices of deficiency were issued. As part of the Tax Reform Act of 1986, the 1954 Code was redesignated the Internal Revenue Code of 1986. Pub. L. 99-514 § 2(a), 100 Stat. 2095. The portions of Sections 170 and 501 of the 1954 Code pertinent to this case were not changed by the Tax Reform Act of 1986 and remain in force in identical form.

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate, in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

* * * *

Internal Revenue Code of 1954 (26 U.S.C.)
§ 501—Exemption From Tax on Corporations, Certain Trusts, Etc.

(a) Exemption From Taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * * *

(c) List of Exempt Organizations.—The following organizations are referred to in subsection (a):

* * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety,

literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

STATEMENT OF THE CASE

The Nature of the Proceedings

Petitioner Robert L. Hernandez was denied an income tax deduction of $7,338.00 in payments for contributions to his church, the Church of Scientology, and was assessed a tax deficiency in the amount of $2,245.00 for the tax year 1981 (SA 4, 6).

Along with hundreds of similarly situated Tax Court petitioners who had contributed sums of money to various churches and missions of the same religious denomination, petitioner waived trial and, subject to his right of appeal, agreed to be bound by the outcome of similar "test" cases. The Commissioner of Internal Revenue (the "Commissioner") and the petitioner stipulated in the Tax Court that such designated cases were typical and that, to the extent relevant, the record of those cases was to be incorporated into the record of all proceedings in petitioner's case (SA at 8).

This case has arisen in a somewhat unique procedural posture. As indicated, both parties below agreed to be bound, subject to the right of appeal, by the relevant factual and legal findings of the Tax Court in a desig-

nated case, *Graham v. Commissioner*, 83 T.C. 575 (1984). The Tax Court ruled in favor of the Commissioner in *Graham*, and on the authority of that decision entered its judgment in favor of the Commissioner in petitioner's Tax Court case. (43a). Petitioner then filed a timely notice of appeal from the Tax Court's decision and appealed to the United States Court of Appeals for the First Circuit which affirmed the decision of the Tax Court.

Appeals similar to petitioner's have been decided by or are pending in all other United States Courts of Appeals except the appellate courts for the District of Columbia Circuit and the Federal Circuit.

Three other courts of appeals have issued opinions in appeals based on records identical to that of the instant case and raising the same legal issues. Like the First Circuit in this case, panels of the Fourth and Ninth Circuits subsequently affirmed the Tax Court's decision. *Miller v. Internal Revenue Service*, 829 F.2d 500 (4th Cir. 1987) and *Graham v. Commissioner*, 822 F.2d 844 (9th Cir. 1987). The Eighth Circuit, however, expressly rejected the First Circuit's analysis and reversed the Tax Court's holding that similar payments were properly deductible. *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987). The Commissioner unsuccessfully sought rehearing in the Eighth Circuit in *Staples* and has now requested an extension of time for filing his petition for certiorari in this Court. The taxpayers' petitions for rehearing were denied in *Miller* and in *Graham*.

Statement of Facts

The parties have stipulated that Scientology, the faith whose sacraments are at issue here, is a religion (55a, ¶ 52) and that the recipients of the contributions, the relevant Scientology missions and churches, were, at all relevant times, churches within the meaning of Internal Revenue Code § 170(b)(1)(A)(i) and tax-exempt religious organizations under § 501 of the Code eligible to receive contributions deductible under § 170. (55a-56a, ¶ 53.)[3]

The payments at issue in this case are made for a core religious practice of the Church of Scientology known as "Auditing." Specifically, the record, through the detailed stipulations of fact, established that parishoners of Scientology are taught that "the individual is an immortal spirit who has a mind and a body" and "that the highest level of spiritual ability and awareness can be obtained only by progressing on the step-by-step basis through lower and intermediate levels of Auditing." (48a, ¶ 16.) "Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology" (48a, ¶ 15). No subject matter is taught, studied or learned during auditing. (49a, ¶ 23.) Dr. Thomas Love, a professor of religious studies at California State University at Northridge, California, gave his uncontradicted expert opinion that "auditing," the service for which the bulk of contributions involved were made, is "the essential religious experience of the Church of Scientology," comparable to beliefs and practices in Eastern religions, specifically Hinduism and Buddhism. (Stip. Rec. III 390-397.)

The Church of Scientology engages in another religious practice also at issue here known to Scientologists as "training." In training parishoners study "the doctrines, tenets, codes, policies and practices of Scientology" (49a, ¶ 24), and study the scriptures of Scientology to the exclusion of all other materials. (Stip. Rec. II 206, 219, 225-26, 229.) As part of training, a person may audit others. (Stip. Rec. I 19-20, 112, 140; II 219, 222.) The purpose of undergoing training is to achieve religious enlightenment and the ability to help others (including the

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[3] The parties' stipulations in *Graham v. Commissioner*, incorporated by reference in the proceedings below, are reprinted in the Appendix to this petition (46a-56a).

ability to audit another person). Dr. Love gave uncontradicted expert testimony that "training" is a form of religious observance, comparable to devotional study of sacred texts in the Buddhist and Judaic traditions (Stip. Rec. III 400-404). Scientologists believe that the spiritual benefits and awareness derived from auditing and training accrue not only to the individual but also extend to the public at large. (Stip. Rec. II 213-14, 223, 238, 260-61, 274-75, 298.)

In accordance with those stipulations and testimony, the Tax Court found the practices at issue to be religious. *Graham v. Commissioner*, 83 T.C. at 580 (37a) ("[P]etitioners wanted to receive the benefit of various religious services provided by the Church of Scientology").

The Churches of Scientology have established charges for auditing and training and refer to the payments of such charges as "fixed donations" or "fixed contributions." (51a, ¶ 36). Such fixed donations are the payments at issue here. (52a, ¶ 40). Auditing is given in sessions. An "Intensive" is a specific number of hours—12½ or 25—of Auditing intended to be given over a short period of time. (49a; ¶ 21). Fixed donations are sometimes made for an Intensive of 12½ or 25 hours of Auditing. (51a, ¶ 37). These donations, which are based upon a religious tenet of Scientology called the Doctrine of Exchange, constitute the source of most of the funds of the Churches of Scientology and are used to pay the costs of church operations and activities. (51a, ¶ 39). See also Stip. Rec. II 244-47, 294-95.)[4] Amounts of fixed donations have been set historically at levels that correspond roughly to a percentage of the income of church members. For example, the Tax Court below found that 25 hours of auditing has historically been set at the equivalent of three months' pay for average middle-class church members. *Graham*, 83 T.C. at 578 n.7 (34a).

[4] The Doctrine of Exchange is based upon early writings of the Founder of the Church of Scientology concerning the need to balance inflow and outflow within and between the dynamics (or, put another way, the need to give as well as receive.) (Stip. Rec. II 244-45, 297-98). A person must outflow to maintain a balance and to be an ethical Scientologist. (Stip. Rec. II 297-98). A person who does not contribute or exchange something will suffer spiritual decline. (Stip. Rec. II, 244, 297-98).

The taxpayers testified that they had made their payments so that they or their children could participate in religious services. (Stip. Rec. II 261-62, 303-04; III 355-56.) They also made their payments because they wanted to support the religious goals and projects of their church. (Stip. Rec. II 261-62, 303; III 355.) None of the taxpayers in the designated cases tried below nor the petitioner here received any material goods or secular services with respect to the payments at issue.[5]

The Commissioner's position in this case is that payments by individuals to participate in the religious sacraments of their church may be disallowed depending on the form of such payment and the nature and value of

[5] Beginning in 1978, the Commissioner of Internal Revenue has attempted to disallow petitioner's deductions for payments made to participate in the religious sacraments of his church based on three different theories. First, the Commissioner issued a Revenue Ruling that would have disallowed as charitable contributions fixed donations paid by Scientologists to participate in the religious sacrament of auditing on the ground that the donations were for "education" and therefore were comparable to payments for tuition at a private or church school. Rev. Rul. 78-189, 1978-1 C.B. 68. Second, in assessing petitioner for the tax deficiency at issue here, the Commissioner contended that the contributions were not made to an organization eligible to receive deductible contributions. (SA 7).

Both of these theories have since been abandoned by the Commissioner in the stipulations applicable in this case. As set forth above, the Commissioner has stipulated that the recipient of the donations here is a tax-exempt church eligible to receive deductible contributions and that auditing is a religious service, not an educational endeavor.

the religious service provided. The Tax Court agreed and the First Circuit affirmed.

The panel below held that payments to a church may not be deducted under § 170 of the Internal Revenue Code when such payments are made to receive religious services. The court concluded that such religious services constitute a "financial" benefit, a *quid pro quo*, that disallows any charitable deduction unless the taxpayer proves that the amount of the payment exceeded the value of the religious services received. *Hernandez*, 819 F.2d 1217 (6a-7a). Although the court noted that IRS valuation of religious services created "practical and constitutional difficulties" and could cause excessive entanglement in violation of the Establishment Clause, the court held that valuation of the religious services at issue here was permissible. *Id.* at 1218 (8a). In addition, the court recognized that its decision in this case cast "some doubt" as to the continuing validity of prior long-standing IRS rulings and practice allowing deduction for various payments made to receive religious services by members of other denominations. *Id.* at 1227 (27a). The panel below further held that its construction of the statute did not violate the First Amendment rights of the appellant under the Free Exercise or Establishment Clause, and that the IRS had not selectively enforced the statute in violation of the First and Fifth Amendments.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW IS ONE OF EXCEPTIONAL IMPORTANCE AND CONFLICTS DIRECTLY WITH A DECISION OF THE EIGHTH CIRCUIT

The court's decision below conflicts directly with the decision of the Eighth Circuit in *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987). Indeed, it is difficult to imagine a squarer conflict since both the decision of the First Circuit below and that of the Eighth Circuit in

Staples reviewed the same Tax decision and were based on the same record. The *Staples* opinion explicitly considered and rejected the holding and reasoning of the court below.

The Eighth Circuit held in *Staples* that the appellants' payments for religious services were deductible. The court held that under IRS rulings, court opinions and the legislative history of § 170, the receipt of religious services is not the type of "material, financial or economic benefit" for which a deduction may be disallowed. The court observed that benefits from receipt of religious services are considered as a matter of law primarily to benefit the general public and only incidentally to benefit the individual participants. The court stated that:

> Religious observances of any faith are considered under the law of charity to be of spiritual benefit to the general public as well as to members of the faith, with the private benefit to the individual participants being merely incidental to the broader good that is served. . . . *The public benefit from religion remains and predominates regardless of whether church doctrines provide for traditional congregational worship or individual worship as in Scientology or whether donations are voluntary or fixed.*
>
> * * * * [R]egardless of the timing of the payment or details of the church's methods of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of secton 170.

Id. at 1326, 1327 (emphasis added) (citations omitted).

Finally, the Eighth Circuit noted the unprecedented nature of the proposals for valuation made by the First Circuit: "No case to which we have been cited values in that manner the strictly religious practices presented by

the stipulations in this case." *Id.* at 1327. The practical and constitutional difficulties of attaching a value to a religious service led the Eighth Circuit in *Staples* to reject the government's position, concluding: "Spiritual gain to an individual church member cannot be valued at any measure known in the secular realm." *Id.*

In addition to presenting a direct conflict among the circuits, the issues raised by the decision below are of exceptional importance in the administration of the tax laws. First, unprecedented valuations of religious services for income tax purposes will be mandated; see Section IV, *infra*. Second, as is discussed in detail in Section III, *infra*, the decision below calls into question income tax deductions for payments by millions of Americans to their churches and synagogues. Third, the decision below represents a dramatic and unwarranted reversal of nearly seventy years of consistent interpretations of § 170 by the IRS to the contrary. Finally, the denial of charitable deductions here violates the religious clauses of the First Amendment.

II. THE DECISION BELOW IMPROPERLY REVERSES NEARLY SEVEN DECADES OF CONSISTENT IRS PRACTICE

For nearly 70 years, the Internal Revenue Service has allowed deductions as charitable contributions under § 170 of the Internal Revenue Code for payments made by individuals to their churches and other religious organizations in order to participate in the religious sacraments of their faith. The form of making such payments has always, prior to the decision below, been treated as irrelevant so long as the payment was for participation in religious practices. Payments for religious services have been granted deductibility by the IRS under § 170 even where the payment is fixed and/or required as a condition of receiving a religious service.

Beginning in 1919, shortly after the income tax was first enacted, the Internal Revenue Service has issued authoritative rulings and pronouncements that allow the deduction of payments for religious services regardless of the form in which the contribution is made. Accordingly, deductions have been allowed under § 170 even when receipt of religious services depends upon the payment of pew rentals, assessments or periodic dues (including tithes). *See* A.R.M. 2, 1 C.B. 150 (1919) (57a) ("In substance it is believed that these [along with 'basket collections'] are simply methods of contributing, although in form they may vary") and Rev. Rul. 70-47, 1970-1, C.B. 49 (reaffirming A.R.M. 2). *See also Staples*, 821 F.2d 1324, 1326 (explicitly refusing to follow the decision of the First Circuit below); Rev. Rul. 76-323, 1976-2 C.B. 18 (payments of entire income from required employment outside religious order made to the order as a condition of membership); Rev. Rul. 71-580, 1971-2 C.B. 235 (the benefits to a parishioner from receipt of religious services are merely incidental to the general public benefit).

The holding of the court below that an individual's receipt of a strictly religious benefit is a "financial benefit" and a "*quid pro quo*" requiring denial of the charitable deduction is, therefore, a striking departure from the Internal Revenue Service's consistent interpretation of the tax law involving payments for religious services over the past nearly 70 years. As the court noted in *Staples v. Commissioner*, 821 F.2d 1324, 1326, "[n]either the tax court nor the government has cited a case in which a taxpayer has been denied a deduction for payments keyed to participation in strictly religious practices."

The prior long-standing practice of the IRS is supported by the statute and its legislative history. Indeed, the distinction drawn by the cases and administrative rulings between payments for religious versus secular services advances the basic policies underlying the Tax

Code. Each of the prior cases denying charitable deductions to a qualified recipient has, until now, involved payments in exchange for goods or services provided in the secular or commercial marketplace. As such, each can be understood as preventing tax-exempt organizations from providing taxpayers with secular goods or services paid for with tax deductible charitable contributions and thereby preventing such tax-exempt organizations from achieving an unfair competitive advantage over taxable providers of similar goods and services.[6] *See Staples*, 821 F.2d at 1327. In addition, such a policy is necessary to preclude payments for goods and services that otherwise would explicitly be nondeductible under another provision of the Internal Revenue Code from being transformed into deductible charitable contributions.

These sound tax policy reasons for disallowing charitable deductions to the extent that the payor receives valuable secular goods and services simply do not exist where, as here, strictly religious services are involved. Practitioners of all religious denominations heretofore have enjoyed religious services by making tax deductible payments. By disallowing deduction of Scientologists' payments for their religious services, the court below has granted the IRS a license to challenge at will people's

[6] *See, e.g., United States v. American Bar Endowment*, 477 U.S. 105 (1986) (insurance); *Sedam v. United States*, 518 F.2d 242 (7th Cir. 1975) (admission to an old-age home); *Feistman v. Commissioner*, 30 T.C.M. (CCH) 590 (1971) (party following a bas mitzvah); *Murphy v. Commissioner*, 54 T.C. 249 (1970) (adoption services) (explicitly distinguishing the personal expense of adoption from a payment to participate in religious services). The Tax Court relied on only two cases, *DeJong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962) and *Haak v. United States*, 451 F. Supp. 1087 (W.D. Mich. 1978), to support its conclusion that a payment for religious services was a *quid pro quo* that should disallow the deduction. Both cases involved payments made to church schools for the secular education of the taxpayers' children. *See also Winters v. Commissioner*, 468 F.2d 778 (2d Cir. 1972) and *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972) (educational expenses).

deductions for payments to participate in religious services and overthrows seven decades of IRS practice without any sound statutory or policy basis.

III. THE DECISION BELOW GRANTS THE IRS A LICENSE SELECTIVELY TO DISALLOW INDIVIDUALS' DEDUCTIONS FOR PAYMENTS SOLELY TO PARTICIPATE IN THE RELIGIOUS SERVICES OF THEIR FAITH

No principled basis exists for distinguishing the payments of Scientologists challenged by the IRS here from a wide variety of other payments to other churches. Instead, the holding of the court below provides the IRS with a license to challenge tax deductions for payments to their churches taken by millions of religious Americans. The opinion of the First Circuit panel below, as well as those of the two other appellate courts that have affirmed the Tax Court decision at issue here, have each alluded to the potentially far-reaching implications of upholding the government's position, but none has squarely faced the challenges to other religions implied by their decisions. *See, Hernandez v. Commissioner*, 819 F.2d 1212, 1227; *Graham v. Commissioner*, 822 F.2d 844, 850; *Miller v. Internal Revenue Service*, 829 F.2d 500, 505.

Scientology's religious services are, to be sure, provided on an individual basis (as in Eastern religions, such as Buddhism and Hinduism), rather than in the more traditional congregational fashion of most Western religions. The Ninth Circuit opinion in one of the related cases indicated that Church literature suggesting that the individual "is the direct and primary beneficiary" of the religious practices that "are the fruits of his payments" renders the payments nondeductible. *Graham*, 822 F.2d at 850. Regardless of denomination, however, religious people expect substantial individual spiritual benefits to flow from participation in their religious sacraments. Expectations of individual spiritual gain from religious

giving have never before precluded deduction of payments for such services under § 170, nor should they here.

Indeed, the benefits claimed for individual Scientologists from auditing are analogous to the Christian practice of "spiritual direction." The work of spiritual guidance involves working with a spiritual preceptor who uses his or her knowledge of spiritual development to guide his or her disciple on the path to the spiritual goal. M. Eliade, *Encyclopedia of Religion*, "Spiritual Guide," Vol. 14 at 29 (MacMillan, New York 1987). This practice has prominence particularly in Catholic and Anglican (Episcopal) sects. See, for example, The Sisters of St. Joseph of Philadelphia, *The Encyclopedic Dictionary of Religion* (Wash., D.C.: Corpus Publications, Philadelphia, 1979), where "spiritual direction" is called a "form of ministry by which one person guides another in the way of evangelical perfection." In Martin Thornton, *Spiritual Direction*, 14-16 (Cowley, 1984), the author notes that ". . . spiritual direction is unashamedly individualistic because it guides and develops that individuality without which corporate action and influence by the organic Church is impossible."

Another analogous "individual" religious practice is that of confession, recognized also across religious traditions. In both Christianity and Jainism, confession to a recipient or guru is regarded as an essential element of religious practice. Eliade, *Encyclopedia of Religion*, *supra*, "Confession," Vol. 4, at 1, 4. In certain Christian practices, particularly Catholicism, failure to confess may result in estrangement from the Church as a result of exclusion from the important ritual of Eucharist. Without confession, which since the Middle Ages has been practiced in private, one cannot be a fully practicing Catholic. K. Rahner & H. Vorgrimler, Dictionary of Theology, 370-73 (NY: Crossroad, 1985) (2d ed.).

Numerous churches proselytize by telling their members that they will derive personal benefits, in terms of jobs, health and solutions to personal problems, among other benefits, from contributing to the church. (Stip. Rec. III 396-98.) Roman Catholics make gifts to their churches in the name of specific saints in order to secure benefits in the category for which that saint is the patron. *See, e.g.*, S. Wilson, *Saints and Their Churches* at 21 (Cambridge University Press). Numerous Protestant churches adhere to the concepts of "seed faith," "100-fold return," "the law of sowing and reaping," and "the law of reciprocity," all of which will result in personal salvation and other personal benefits. These denominations emphasize in their literature the personal benefits to be obtained by making payments to the Church. *See, e.g.*, O. Roberts, *Seed Faith Scriptures* (1972) and P. Cho, *Salvation, Health, Prosperity* (1987). That Scientology churches tell their parishioners that benefits from participation in religious sacraments will accrue to the individual does not distinguish Scientology from other denominations.

Neither the Internal Revenue Code nor its policies permit a distinction between individual and congregational worship in determining the allowability of a deduction for a charitable contribution under § 170. *Cf. Hernandez*, 819 F.2d at 1227 (27a) ("The IRS found significance in the fact that, unlike the collective worship services obtained in exchange for pew rents and . . . membership dues, auditing and training sessions are performed in private sessions.") Moreover, such a distinction between individual and congregational worship would advantage or disadvantage individuals based upon the religious tenets of their denomination in contravention of the First Amendment of the United States Constitution. *See, e.g.*, *Larson v. Valente*, 456 U.S. 228, 244 (1982) and Section V below.

Nor does the "fixed donation" form of the payment to the Scientology church accord any principled basis for distinguishing the payments at issue here from payments to religious organizations of other faiths. The decision of the courts below to disallow deduction of Scientologists' payments for their religious services here improperly elevates form over substance. *Staples*, 821 F.2d at 1327. Disallowance of deductions for payments for religious services because of the form of the payment finds no support in the Internal Revenue Code and contradicts the fundamental principle of tax adjudication that requires the substance, not the form of a transaction, to govern. *See e.g., United States v. Phellis*, 257 U.S. 156, 168 (1921) (treating the superiority of substance over form as a well-settled principle of tax adjudication).

Since 1919, when the IRS first decided to allow deductions for fixed mandatory payments to participate in religious activities, the substance, not the "form" or "structure" of a transaction has been held to govern. The Commissioner's position then, reaffirmed in 1970, remains the correct one today, despite the government's attempt to abandon it here. *See* A.R.M. 2, 1 C.B. 150 (1919), (57a) ("In *substance* it is believed that [the payment of pew rentals, assessments or periodic dues (including tithes) along with 'basket collections'] are simply methods of contributing, although in *form* they may vary") (emphasis added) and Rev. Rul. 70-47, 1970-1 C.B. 49 (reaffirming A.R.M. 2).

Comparison with the Mormon tithe may be useful. Mormons are required to tithe in accordance with the church's "worthiness" standards so that they personally will be admitted to the temple. *See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 107 S.Ct. 2862, 2865 n.4 (1987). Mormon temples play a "critical role" in Mormon life, for it is in these temples that the most important rituals are performed, such as marriage, binding rites, baptisms,

of the living and the dead. While Mormons have worship chapels also, they cannot supplant or replace the temples. In order to gain admission to temples, Mormons must obtain "temple recommends." It is the standing law for membership that each Mormon "tithe," or contribute 10% of his income, to the church. This practice is enforced through the rigorous questioning of those seeking temple recommends. J. Heinerman & A. Shupe, *The Mormon Corporate Empire*, 96-97, 102-03 (1985). See also, Church of Jesus Christ of Latter Day Saints, *The Priesthood Manual* (Independence, Mo.: Herald Publishing House): Part 4 at 275: "The presenting of one's tithing statement is an act of worship.") The significant distinction between petitioner's payment and deductible tithes paid by a Mormon as a condition of admission to the temple is the individual versus congregational nature of the service. There is as much of a *quid pro quo* in one case as the other.[7]

Similarly, admission to Jewish High Holy Day services is often restricted to ticket holders. *See, e.g.*, M. Sklare, "The Sociology of the American Synagogue" in J. Neusner (ed.), *Understanding American Judaism; Toward the Description of a Modern Religion* (Anti-Defamation League of B'nai B'rith KTAV Publications, N.Y., 1975), Vol. I, at 95-96 ("While daily services, Sabbath services, and festal services are open to all, the demand for seats on the High Holy Holidays is so large that admission is commonly restricted to ticket-holders. In some congregations tickets are distributed only to

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[7] In fact, the form of payment disallowed deduction by the tax court in *Murphy v. Commissioner*, 54 T.C. 249 (1970), a case disallowing deduction for payments to receive adoption services, was equivalent to a tithe, an amount equal to ten percent of the taxpayer's income. Unlike tithes by Mormons, the taxpayer in *Murphy* received secular, not religious services.

members while in other synagogues they are sold to the public, but at a higher price than the charge made to members.") *See also*, Stip. Rec. III 387-397 (Expert testimony as to parallels among the ways more traditional churches raise funds and Scientology's system of scheduled fixed donations for certain religious services). As the IRS recognized as early as 1919, like Scientologists, religious people universally expect to receive religious benefits in exchange for contributions to their churches.

In substance, the church's practice here is not materially different from more traditional religious organizations' use of—and the Commissioner's allowance of deductions for—fixed payments on a periodic or annual basis. As the Eighth Circuit recognized, a fixed payment schedule simply may be a more effective means of fund-raising for a church that predominately provides individualized, rather than congregational, services. *Staples*, 821 F.2d at 1327-28. Although the Tax Court acknowledged that the fixed payment schedule had an historical grounding in its linkage to the income levels of the church community, *Graham*, 83 T.C. at 578 n.7 (34a), as do other more traditional religious payment schedules like the tithe, and is based on church doctrine, the court below nevertheless relied on the fixed schedule to find that the payments in this case were for a *quid pro quo* and thus nondeductible. *Hernandez*, 819 F.2d at 1216-17 (5a-6a). This elevation of form over substance is an improper interpretation of § 170, one with great potential to be used selectively—indeed misused—by the IRS to disallow deductions for payments for religious sacraments of many Americans.

IV. THE DECISION BELOW MISREADS AND IMPROPERLY EXTENDS THE 1986 DECISION OF THIS COURT IN *UNITED STATES V. AMERICAN BAR ENDOWMENT* TO REQUIRE IRS VALUATION OF RELIGIOUS SERVICES—A TASK THAT IS BOTH IMPRACTICAL AND UNCONSTITUTIONAL

The court below relied heavily on the opinion of this Court in *United States v. American Bar Endowment*, 477 U.S. 105, 106 S.Ct. 2426 (1986). *Hernandez*, 819 F.2d at 1216, 1217, 1218, and 1219 (5a, 7a, 8a, 10a-11a). However, this extension of *American Bar Endowment* to require disallowance of deductions for the purely religious services at issue here constitutes an important misapplication of that recent decision of this Court.

American Bar Endowment involved an organization (ABE) that conducted a "trade or business" unrelated to any charitable activity—the provision of group insurance policies to the organization's members. Because of certain characteristics of the members, ABE was able to obtain insurance at substantially lower cost than the members could have obtained elsewhere. Instead of lowering its rates, however, ABE gave charitable organizations the excess of the members' premium payments over the cost of providing the insurance. The only question in the case, arising under § 170 of the Code, was whether the excess payment constituted a contribution or gift deductible by the members. This Court held that the payments exceeding cost were not deductible because the members had failed to demonstrate that they could have purchased comparable insurance policies elsewhere for less than the full amount that they paid. 106 S.Ct. at 2433-34.

In *American Bar Endowment*, the payments were in exchange for receipt of a secular economic benefit: insurance services. The taxpayers claimed deduction for an alleged difference between the payment and the fair

market value of the benefit received. Here no secular economic benefit was received at all, and the analysis of *American Bar Endowment* has no application to the instant case. Mr. Hernandez, the petitioner here, received in "return" not a commercial economic product like life insurance, but instead participation in religious worship, which has no calculable financial or economic value.

Nevertheless, the court below read *American Bar Endowment* to require a determination of the monetary value of religious services received in return for a parishioner's payments. *Hernandez*, 819 F.2d at 1216-18 (5a-10a). *See also, Graham*, 822 F.2d at 849; *Miller*, 829 F.2d at 503. *Contra, Staples*, 821 F.2d at 1328. To be sure, whenever, a payment is made to a tax-exempt organization in exchange for an economic or financial benefit of "substantial" or "commensurate" value, the IRS and in turn the courts have been compelled in each case to inquire about the relationship between the amount of the payment to a tax-exempt organization and the value of the benefit received by the payor. *See, e.g., American Bar Endowment*, 477 U.S. 105; *DeJong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962) (disallowing $400 of the $1,075 claimed as a deduction for educational benefits) and *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972) (disallowing $640 of $900 claimed as a deduction for educational benefits). As the Fourth Circuit put it, the Tax Court's decision necessarily requires inquiry into the "relationship between the *quid* and the *quo*." *Miller*, 829 F.2d at 503.

The court below offered three methods for valuing religious services such as are at issue here: by looking "either to (1) the price set by the service providers, (2) the prices set by providers of similar services, or (3) the costs of providing the service." *Hernandez*, 819 F.2d at 1217 (7a). Each of these methods faces practical and constitutional obstacles.

First, valuation of services provided by a charitable organization as necessarily equal to the amount paid—as done by the court below—is contrary to IRS rulings and case law. *See, e.g.*, Rev. Rul. 67-246, 1967-2 C.B. 104, *American Bar Endowment*, 477 U.S. 105, *DeJong*, 309 F.2d 373, and *Oppewal*, 468 F.2d 1000. These cases demand that the taxpayer, the IRS and ultimately the courts place a monetary value on the services provided so that, whenever a payment to a church is in excess of the determined value of the religious services received in exchange, the donor may deduct the excess amount. As the court below acknowledged "[s]uch a case would present not only the problem of determining value but also the problem of excessive entanglement in the affairs of a religious institution." *Hernandez*, 819 F.2d at 1218 (8a). The Eighth Circuit properly rejected the suggestion that the value of the religious services could be determined from the prices set or paid:

> Furthermore, these stipulations foreclose any reliance on the Church of Scientology's fixed donations as representing the value of its essential religious practices. Under the stipulations the fixed donations are not market prices set to reap the profits of a commercial money-making venture; rather, the Church of Scientology is a bona fide church which selected fixed donations as its mechanism for raising funds from its members.

821 F.2d at 1327-28.

The second suggestion by the court below that the services may be valued by reference to "the price set by providers of similar services," *Hernandez*, 819 F.2d at 1217 (7a), is unworkable. In the case of religious services, there are no "similar services" whose prices may be ascertained. Not only are there no prices to which comparison can be made, but the very notion of comparing relative values of religious services would violate First

Amendment prohibitions on entanglement of church and state both through the valuation of religious services and the creation of denominational preferences. *See, Walz v. Tax Commissioner*, 397 U.S. 664, 674 (1970); *Larson v. Valente*, 456 U.S. 228, 234.

Finally, valuing services based on the "cost of providing the services," as suggested below, *Hernandez*, 819 F.2d at 1217 (7a) also would create both practical and constitutional difficulties. To determine the cost of providing services will require deep intrusions into a church's finances and operations. To take but one example, questions about the appropriate accounting methods for indirect costs, such as overhead, are inevitable. Excessive and unconstitutional church-state entanglement would result from such an inquiry.

The *Staples* court remarked upon the unprecedented nature of the proposals for valuation made by the First Circuit: "No case to which we have been cited values in that manner the strictly religious practices presented by the stipulations in this case." 821 F.2d at 1327. The practical and constitutional difficulties of attaching a value to a religious service led the Eighth Circuit in *Staples* to reject the government's position, concluding: "Spiritual gain to an individual church member cannot be valued by any measure known in the secular realm." *Id.*

The consistent prior practices of the IRS and the courts, and the construction urged here by petitioner—that, regardless of their form, payments for religious services are deductible under § 170 and therefore need not be valued—avoids this problem and thus is constitutionally proper, if not mandated.

V. THE DENIAL BY THE COURT BELOW OF CHARITABLE CONTRIBUTION DEDUCTIONS UNDER § 170 FOR AUDITING BY SCIENTOLOGISTS VIOLATES THE RELIGION CLAUSES OF THE FIRST AMENDMENT

The religion clauses of the First Amendment are intended to provide comprehensive protection of religious liberty. They stand for the propositions that religious pluralism is essential to the welfare of the nation and that all citizens are entitled to protection from the imposition of an orthodoxy formulated by the government. *See, e.g., Everson v. Board of Education*, 330 U.S. 1, 8-14 (1947). *See also*, L. Tribe, *American Constitutional Law*, 814-15 (Mineola, N.Y.: Foundation Press, Inc., 1978: Supp. 1979). Broadly speaking, the Free Exercise Clause protects individuals from government interference with their religious beliefs and practices. The Establishment Clause prohibits governmental support for, control over, or inhibition of religious institutions and decisions.

In this case, the government's actions implicate both of the religion clauses. First, by taxing the plaintiff's primary religious practice, which merits treatment as a deductible activity, and which is comparable as the exercise of religion to the practices of other faiths for which the IRS has allowed deductions, the government has stated in effect that Scientology fails to satisfy the state's measure of orthodoxy. Second, by creating a denominational preference that would allow deductions for payments for congregational worship regardless of the form of payment, but not for the individual worship of Scientologists, the lower court's ruling violates the Establishment Clause. *Larson v. Valente*, 456 U.S. 228, 244; *Everson v. Board of Education*, 330 U.S. 1, 15. Further, by construing § 170 against the deductibility of payments for Scientologists' religious practices, the IRS impermissibly entangles government with religion: the IRS's interpretation of the statute requires valuation of

purely spiritual matters. *See, Walz v. Tax Commission*, 397 U.S. 664, 669 (1970) and Section IV of this petition.

The government's disallowance of charitable contribution deductions imposes a burden on the taxpayer's religious practices by subjecting them to income tax. *See Bob Jones University v. United States*, 461 U.S. 574, 603-04 (1983). Once such a burden has been shown, the government must demonstrate a compelling state interest for its actions. *Id.* at 604.

The court below misapplied the relevant constitutional standards by mischaracterizing the taxpayer as seeking special tax concessions for his payments to participate in the services of his religion. To the contrary, this case does not involve a request for exemption from taxation that members of other religions must pay. *See United States v. Lee*, 455 U.S. 252 (1982). Rather, this case involves a taxpayer who is asking only to be treated in the same manner as members of other religions have always been treated and to be granted deductions for payments to participate in the religious sacraments of his church.

The court below accepted the IRS's contention that its compelling interest was the need to maintain a sound and uniform tax system. *Hernandez*, 819 F.2d at 1225 (23a-24a); *Graham*, 83 T.C. at 583 (40a-41a). The petitioner does not question the government's interest in a sound tax system. *United States v. Lee*, 455 U.S. 252. But the government's action here achieves exactly the opposite: by denying these deductions the IRS creates unsound and unequal tax administration. The court below erred in accepting the government's assertion that the payments at issue here are distinguishable from payments to other churches, which apparently would remain deductible. Drawing such distinctions among religions coupled with

the enormous problems of valuing religious services that will be required, surely is not "sound" tax administration.

The consistent IRS practice of allowing charitable deductions for payments for religious services, regardless of their form or of their nature or value, has been sound during the nearly 70 years since the publication of A.R.M. 2 in 1919. The long-standing administrative distinction between secular and religious services is well grounded in current and historical policies of the tax code, and is a permissible accommodation of religion which has avoided excessive church-state entanglement for nearly seven decades. *See, Corporation of Presiding Bishops of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 197 S.Ct. 2862.

The decisions of the court below and of the Tax Court permit the IRS to satisfy the "compelling state interest" requirement of the First Amendment simply by claiming that any interpretation of the law advances "sound tax administration." Those holdings—if left unreviewed by this Court—will have the practical effect of exempting the administration of the tax law from the need to comply with the most fundamental constitutional requirements. The Constitution should not end where the Internal Revenue Code begins.

CONCLUSION

For all the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 12, 1987

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

No. 86-1276

ROBERT L. HERNANDEZ,
Petitioner, Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent, Appellee.

Argued Jan. 8, 1987

Decided June 1, 1987

Before COFFIN and SELYA, Circuit Judges, and GIGNOUX,* Senior District Judge.

COFFIN, Circuit Judge.

This appeal presents the question whether a taxpayer who paid the price set by his church in exchange for specified services provided by the church is entitled to deduct the payment from his taxable income as a charitable contribution.

Robert L. Hernandez is a member of the Church of Scientology. In 1981, he paid $7,338 to the Church in

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* Of the District of Maine, sitting by designation.

exchange for Scientology services called "auditing" [1] and "training." [2] The services were offered to him at fixed prices set by the Church.[3] Hernandez deducted the $7,338 as a charitable contribution on his 1981 federal income tax return, but the Commissioner of Internal Revenue disallowed the deduction and assessed a $2,245 tax deficiency against him. The Tax Court affirmed the disallowance and deficiency assessment, and this appeal ensued.

Hernandez argues that disallowance of his deduction violates his statutory rights under section 170 of the Internal Revenue Code (Code), 26 U.S.C. § 170(c) (1987), and his constitutional rights under the Establishment

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[1] Scientologists are taught that "auditing," also referred to as "processing," "counseling," and "pastoral counselling," is a procedure through which an individual can obtain higher levels of spiritual ability and awareness. Auditing sessions are structured in accordance with the rituals and doctrines of Scientology and are generally administered in private, one-to-one sessions by specially trained Scientologists called "auditors." Stipulation #1, nos. 12-23, I Stipulated Record at 17-18.

[2] The Church of Scientology offers "training" through educational courses including (1) basic introductory courses on the doctrines and tenets of Scientology; (2) auditor training courses; (3) courses on Church management methods; and (4) general educational courses. This case involves courses in the first two categories. Scientologists are taught that spiritual gains will result from studying Scientology doctrines. Stipulation #1, nos. 24-33, I Stipulated Record at 18-21.

[3] The Church of Scientology generally requires fixed payments, often referred to as "fixed donations" for its auditing and training services. The Church offers discounts on course prices for package purchases and for advance payment. Individuals may obtain refunds on undelivered portions of auditing or training minus an administrative charge and with the proviso that the individual will not again be audited or trained. "Church of Scientology, Information, Definitions, Rules," at 6, I Stipulated Record at 48; "On Exchange," I Record Appendix at 49.

and Free Exercise clauses of the First Amendment.[4] He also claims that the Internal Revenue Service (IRS) has selectively prosecuted him because of his religion in violation of the Establishment clause and the Fifth Amendment right to equal protection of the laws. After describing the somewhat unusual procedural status of this case, we shall consider each of appellant's arguments in turn.

I. Procedural History

The parties in this case agreed to be bound, subject to the right of appeal, by the relevant factual and legal findings of the Tax Court in *Graham v. Commissioner*, 83 T.C. 575 (1984), *appeals pending*, Nos. 84-7794, 84-7798, 84-7799 (9th Cir. argued December 10, 1985), a set of three similar cases pending before the Tax Court at the time of their stipulation. The stipulation excludes "findings of fact and conclusions of law relating to any petitioner's subjective intent." The parties in *Graham* had stipulated to the record and relevant rulings in *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984), *appeal pending*, No. 85-7324 (9th Cir. argued August 8, 1985). The *Graham* court ruled in favor of the Commissioner, and it is on the authority of that decision that the Tax Court entered its judgment of deficiency in this case. Because neither party has objected to this procedure, we adopt the records and opinions in *Church of Scientology of California* and *Graham* as part of the record before us in this case.[5]

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[4] The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

[5] The Tax Court allowed the Commissioner and various taxpayers to follow this same procedure in several hundred similar cases, and, as a result, appeals based largely on the same record are currently pending before all of the other federal courts of appeals except the Federal Circuit.

We will not repeat here the detailed description of Scientology and its practices recorded in the Tax Court's opinions in those cases, but will refer to the relevant findings throughout our opinion. One set of findings requires preliminary clarification. Following a fifty-one day trial, the Tax Court in *Church of Scientology of California v. Commissioner* upheld the Commissioner's revocation of the tax exemption of the Church's central branch, finding, *inter alia*, that the Church operated for a substantial commercial purpose, that its net earnings inured to the benefit of its officials, and that the Church violated public policy by conspiring, through burglaries of IRS offices and other unlawful means, to prevent the collection of taxes. In the *Graham* case and in this case, the Commissioner did not contest the taxpayers' assertions (1) that Scientology is a religion; and (2) that the Church of Scientology is a church within the meaning of section 170(b)(1)(A)(i) and a tax exempt religious organization under sections 170(c)(2), 501(a), and 501(c)(3) of the Code. Stipulation #1, nos. 52-53, I Stipulated Record at 26.[6] Although preliminary resolution of these questions might have avoided some of the constitutional questions presented in this case, it might also have involved other serious constitutional issues, and so we accept the parties stipulations for the purposes of this appeal.

II. Statutory Claim

Section 170 of the Internal Revenue Code allows a taxpayer to deduct from taxable income, any "contribution or gift to or for the use of . . . [a] corporation, trust,

[6] The Commissioner made these concessions even though the record indicates that the IRS's original reason for disallowing the deduction was that "the reported contribution was not made to a qualified organization." Supplemental Appendix at 7. The government's brief explains that the Commissioner's concessions "apparently reflected a desire to expedite these proceedings without awaiting the final outcome of *Church of Scientology*." Appellee's brief at 4 n.5.

or community chest, fund, or foundation . . . organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition . . . , or for the prevention of cruelty to children or animals." 26 U.S.C. § 170(c). Since the Commissioner has not challenged the Church's status as a tax-exempt religious organization under the Code, the only statutory question before us is whether payments for auditing and training services are "contribution[s] or gift[s]" within the meaning of the Code. Our analysis of this question is framed by the Supreme Court's recent interpretation of the scope of the charitable contribution deduction:

> The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must as a minimum demonstrate that he purposely contributed money or property in excess of any benefit he received in return.

United States v. American Bar Endowment, —— U.S. ——, 106 S.Ct. 2426, 2434, 91 L.Ed.2d 89 (1986). In other words, a payment to a charitable organization is tax deductible "only if and to the extent it exceeds the market value of the benefit received" and "only if the excess payment [was] 'made with the intention of making a gift.'" *Id.* 106 S.Ct. at 2434.

The Tax Court in *Graham* found that because the taxpayers' payments to the Church of Scientology were made with the exception of receiving a commensurate return benefit, namely, auditing and training services, and because such a benefit was actually received, the payments were not charitable contributions, but rather, *quid pro quos*. Hernandez does not allege that his intentions were any different from those of the *Graham* taxpayers. Nor does he claim that he contributed money in excess of the benefit he received in return. Rather, he argues that, as

a matter of law, the return of a commensurate *religious* benefit, as opposed to an *economic or financial* benefit, cannot result in the denial of a section 170 deduction. Thus, he claims that all payments to churches for religious services—whether gifts or not—should be tax deductible under section 170.

Hernandez's position is contrary to the plain language and legislative history of section 170. Section 170 explicitly provides that payments to churches and other qualified organizations are deductible only if they are "contribution[s] or gift[s]." Though the Senate report indicates that Congress intended the phrase "contribution or gift" to include only "those contributions which are made with no expectation of a financial return commensurate with the amount of the gift," the report uses medical care as an illustration of a "financial" return. S.Rep. No. 1622, 83d Cong.2d Sess. 196, *reprinted in* 1954 U.S.Code Cong. & Admin.News 4621, 4830-31. We find no indication that Congress intended to distinguish the religious benefits sought by Hernandez from the medical, educational, scientific, literary, or other benefits that could likewise provide the *quid* for the *quo* of a nondeductible payment to a charitable organization.

Hernandez claims that while the government may assign economic value to secular benefits, it is impossible for the government to determine the economic value of religious benefits. As a practical matter, we note that the government has recognized the economic value assigned to secular services such as adoption services, symphony performances, and museum admission even though the benefits flowing from those services are, in theory, as difficult to monetarize as religious ones. *See Murphy v. Commissioner*, 54 T.C. 249 (1970) (mandatory fee paid to adoption agency is not tax deductible); Rev.Rul. 67-246, 1967-2 C.B. 104 (price of ticket to charity concert is deductible only to the extent it exceeds the value of admission); Rev.Rul. 68-432, 1968-2 C.B. 104 (cost of

museum membership is nondeductible where taxpayer enjoys free admission to poetry readings and the like). In such cases the courts and the IRS look not to the intrinsic value of the benefits, but instead either to (1) the price set by the service providers, (2) the prices set by providers of similar services, or (3) the costs of providing the service.

We find precedent for the proposition that the government may similarly recognize the economic cost of religiously-oriented services that religious organizations provide to taxpayers. In *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir.1972), we held that a payment to a parochial school was nondeductible to the extent that it was offset by the cost of providing a "religiously-oriented" education to the taxpayers' children.[7] *See also Winters v. Commissioner*, 468 F.2d 778 (2d Cir.1972); *De Jong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962). In these cases, the courts did not attempt to evaluate the secular or ecclesiastical value of a religious education; rather, they simply recognized the economic cost to the religious organization of providing the religiously-oriented benefit to the taxpayer.

Hernandez attempts to distinguish the parochial school cases by mischaracterizing the "religiously-oriented" education received as a "secular" education with "some small, unspecified element of religious teaching." Appellant's reply brief at 6-7. While it is of course true that

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[7] In *Oppewall*, we expressed our dissatisfaction with subjective inquiry into taxpayer motivation in making purported charitable contributions. 468 F.2d at 1002. After *American Bar Endowment*, however, it is clear that even when a taxpayer demonstrates that a payment to a charitable organization exceeded the economic value assigned to the return benefit, we must inquire into whether the taxpayer intended the excess payment to be a gift. 106 S.Ct. at 2434. The clarification does not affect the result in this case, for Hernandez has failed to prove *either* prong of the *American Bar Endowment* test.

substantial secular as well as religious benefits flow from a religiously-oriented education, the same is true of the training and auditing services provided in this case [8] and of other religious services. *Oppewal*, *Winters*, and *De Jong* did not, as Hernandez claims, rest on findings that the return benefits were predominantly secular. The courts in those cases did not attempt to identify and separate the religious and secular aspects of the educational benefits. Indeed, as Hernandez acknowledges, any attempt to do so would lead to excessive government entanglement with religious doctrine.

We can hypothesize cases in which a literal application of the *American Bar Endowment* test could create both practical and constitutional difficulties. Imagine, for example, a case in which the government monitored church records in an attempt to place a monetary value on the benefit of all church services, group programs, and pastoral counselling generally available to contributing members. Such a case would present not only the problem of determining value but also the problem of excessive entanglement in the affairs a religious institution. The present case, however, raises neither of these problems because (1) the Church of Scientology itself established and advertised monetary prices (fixed donations") for the services at issue; and (2) Hernandez has not argued that the prices set by the Church exceed the cost of providing the services he received or that he paid any part of the price with the intention of making a gift to the Church.

[8] Church literature states that, in addition to providing an opportunity for spiritual growth, auditing can lead to freedom from drug use, to relief from physical aches and pains, and to improved memory and communicative abilities. 73 *Gateway* at 6-7, I Stipulated Record at 95-96. Similarly, in addition to providing information about "Scientology and its general background," the Hubbard Qualified Scientologist course purchased by some of the *Graham* taxpayers "teaches one how to correctly study and what are the mechanics of learning any subject." 61 *Gateway* at 8, I Stipulated Record at 74.

On the basis of the record before us, including the factual findings of the *Graham* court, we conclude that Hernandez has failed to shoulder the burden assigned him by the Supreme Court.[9] Accordingly, we hold that the Tax Court correctly ruled that Hernandez's payments to the Church of Scientology for auditing and training services were not deductible as "charitable contributions" under section 170 of the Code.

III. The Establishment Clause Claims

Hernandez next argues that section 170, both on its face and as applied to him, violates the First Amendment's Establishment clause. We consider these claims in turn.

A. Facial Validity

Hernandez argues that section 170, on its face, creates denominational preferences of the type forbidden in *Larson v. Valente*, 456 U.S. 228, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982). *Larson* held that a statute that makes "explicit and deliberate distinctions between different religious organizations," thereby communicating government endorsement or disapproval of those religions, must be subjected to strict scrutiny. 456 U.S. at 247 n.23, 102 S.Ct. at 1684 n. 23. The statute in *Larson* imposed registration and reporting requirements on religious groups that solicited more than fifty percent of their contributions from nonmembers. The Court held that the Minnesota statute violated the Establishment Clause because it distinguished, without a compelling justification, between " 'well-established churches' that have 'achieved strong but not total financial support from their mem-

[9] Though the *Graham* case was decided before the Supreme Court's opinion in *American Bar Endowment*, the Tax Court anticipated and correctly applied the *American Bar Endowment* test. Hernandez has not asked this Court to remand for reconsideration in light of *American Bar Endowment*, and we can see no purpose to be served by such a ruling.

bers,' . . . and 'churches which are new and lacking in a constituency, or which, as a matter of policy, may favor public solicitation over general reliance on financial support from members.' " *Id.*

The critical flaw in Hernandez's attempt to analogize his case to *Larson* is that section 1710 draws no distinctions among organizations "operated exclusively for religious, charitable, scientific, literary, or educational purposes." The statute does distinguish among types of payments, singling out contributions and gifts for special tax treatment, but we agree with the Tax Court that the "contribution or gift" requirement is a secular criterion encouraging gifts to all religious and nonreligious charitable organizations and communicating no government preference for any particular charitable organization. We therefore reject Hernandez's claim that section 170, on its face, communicates governmental preference for religious denominations other than his own in violation of the Establishment Clause.

B. Validity as Applied

Hernandez next argues that even if section 170 is facially neutral, the Tax Court applied the statute by drawing nonneutral denominational lines that discriminated against him and his church. Specifically, Hernandez claims that the Tax Court violated the Establishment Clause by discriminating against churches that conduct individual rather than congregational services and against churches that require fixed payments for services rather than relying on voluntary contributions of varying amounts.

We have carefully reviewed the *Graham* court's opinion and find no basis for Hernandez's claim that the ruling was based upon the individual nature of the auditing and training sessions. Under the Tax Court's analysis in *American Bar Endowment*, if the return benefit is commensurate with the payment or if obtaining the benefit

is the reason for making the payment, then whether the benefit is received in an individual or a group setting, the payment is a *quid pro quo* rather than a gift. 106 S.Ct. at 2434. Our own decision in *Oppewal* illustrates the point, for in that case, payments for a religiously-oriented education were held to be nondeductible personal expenses even though the educational benefit was obtained in a group, rather than an individual, setting. 468 F.2d at 1000. The number of students in the school was relevant only to the calculation of the cost per student of running the school. Where, as here, an organization calculates and sets the price to each recipient of the return benefit, any information concerning the number of persons receiving the benefit is completely irrelevant to the statutory inquiry.

In contrast, the *Graham* court did take into account the fixed and mandatory nature of the auditing and training prices in determined that the taxpayers' payments were made with the exception of receiving a commensurate return benefit. We believe that this evidence was relevant in determining both the economic value assigned to the return benefit and the taxpayers' intentions in making the payment. Indeed, we believe that evidence that a service was obtained only in exchange for a fixed payment creates, at a minimum, a rebuttable presumption that the payment was not a gift. Like the statutory distinction between gifts and other types of payments, the Tax Court's implicit distinction between fixed mandatory payments and other types of payments is neutral and expresses no disfavor for religion or for any particular religious organization.

Hernandez's argument boils down to a claim that the Tax Court's neutral interpretation of section 170 has a disparate impact upon him and, derivatively, upon his church. We note preliminarily that since the record is devoid of evidence showing that the Church of Scientology requires its members to pay more money in the nature

of fixed mandatory payments than other churches require of their members, Hernandez has failed to substantiate his claim that the Tax Court's interpretation of section 170 has a disparate impact upon Scientologists. More fundamentally, even if the Tax Court's interpretation of section 170 did have a disparate impact on Scientologists or on their church, such an impact would not invalidate a neutral interpretation of a law whose purpose or primary effect is neither approval nor disapproval of any religious denomination. The Supreme Court has repeatedly held that congressional enactments promoting the general welfare of society do not violate the Establishment Clause just because their "reason or effect merely happens to coincide or harmonize with the tenets of some . . . religions." *Lynch v. Donnelly*, 465 U.S. 668, 682, 104 S.Ct. 1355, 1364, 79 L.Ed.2d 604 (1984) (quoting *McGowan v. Maryland*, 366 U.S. 420, 442, 81 S.Ct. 1101 1113,, 6 L.Ed. 2d 393 (1961)). The same must be true of judicial interpretations of those statutes in accordance with the secular legislative intent.

The purpose and primary effect of section 170 is to encourage gifts to charitable organizations. *See* S.Rep. No. 1567, 75th Cong., 2d Sess. 14 (1938), *reprinted in* 1939—1 C.B. (Part 2) 779, 789; *Helvering v. Bliss*, 293 U.S. 144, 55 S.Ct. 17, 19 L.Ed. 246 (1934). The Tax Court's interpretation is consistent with this laudable secular goal. Thus, the law as interpreted by the Tax Court in this case is quite unlike laws whose purpose or primary effect is the establishment of religion. *See, e.g., Wallace v. Jaffree*, 472 U.S. 38, 105 S.Ct. 2479, 86 L.Ed. 2d 29 (1985) (legislative history established that the sole purpose underlying Alabama's moment of silence statute was to convey a message of State endorsement and promotion of prayer in the public schools); *Larson v. Valente*, 456 U.S. at 254, 102 S.Ct. at 1688 (legislative history of Minnesota's fifty percent rule demonstrated that the provision was drafted with the explicit intention of burdening or favoring selected religious denominations). The

Tax Court's interpretation of section 170 is no more unconstitutional than section 170s' "gift or contribution" requirement or its limitation on the total amount a taxpayer may deduct,[10] though the former would have a disparate impact on a religion that prohibited giftgiving and the latter would have a disparate impact on taxpayers whose religion required them to contribute a greater percentage of their income than the statute would allow them to deduct. Any incidental disparate impact on Hernandez's religious practices or on his church stemming from the Tax Court's neutral application of section 170 is surely less significant than the impact on various religions of Sunday closing laws, *McGowan v. Maryland*, 366 U.S. at 420, 81 S.Ct. at 1101; city creche displays, *Lynch v. Donnelly*, 465 U.S. at 688, 104 S.Ct. at 1355; legislative prayers, *March v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983); and the host of other governmental actions that have survived Establishment Clause challenges before the Supreme Court. *See Lynch v. Donnellly*, 465 U.S. at 681-82, 104 S.Ct. at 1363-64 (discussing cases).

Comparing the Tax Court's interpretation of section 170 with Hernandez's proposed interpretation reveals the constitutional strength of the former and the constitutional infirmity of the latter. Hernandez proposes that all payments for religious services, whether gifts or not, be considered tax deductible contributions. In other words, he proposes that payments for religious services be treated more favorably under section 170 than payments for secular services. We cannot imagine a clearer request for government endorsement of religion. *See Wallace v. Jaffree*, 472 U.S. at 70, 105 S.Ct. at 2497 (O'Connor, J., con-

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[10] "In the case of an individual . . . [a]ny charitable contribution to . . . a church or a convention or association of churches . . . shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year." 26 U.S.C. § 170(b)(1)(A)(i).

curring) (The Establishment Clause prohibits the government from "conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred:"); *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 105 S.Ct. 2914, 86 L.Ed.2d 557 (1985) (Connecticut statute providing employees with the absolute right not to work on their chosen sabbath violated the Establishment Clause because it commended that "Sabbath religious concerns automatically control over all secular interests at the workplace."); *Committee for Public Education v. Nyquist*, 413 U.S. 756, 794, 93 S.Ct. 2955, 2976, 37 L.Ed.2d 948 (1973) (New York law providing tax benefits to parents of children attending nonpublic schools had the primary effect of advancing religion because, among other reasons, the benefits of the law would flow primarily to parents of children attending sectarian nonpublic schools). In contrast, like the tax exemption for property devoted to religious, educational, or charitable purposes upheld in *Walz v. Tax Commission*, 397 U.S. 664, 672-73, 90 S.Ct. 1409, 1413-14, 25 L.Ed.2d 697 (1970), section 170 as interpreted by the Tax Court does not discriminate between religion and nonreligion: gifts to all charitable organizations are tax deductible, *quid pro quo* payments are not.

Hernandez's suggestions that courts should distinguish between secular and religious services under section 170 runs afoul of the Establishment Clause in yet another way, for requiring the government to distinguish the secular from the religious would require it to engage in ongoing evaluation of the genuineness of assertedly religious services, thereby entanging itself in church doctrine. *See Lemon v. Kurtzman*, 403 U.S. 602, 619-20, 91 S.Ct. 2105, 2114-15, 29 L.Ed.2d 745 (1971) (Government evaluation of parochial school records to determine which expenditures were for secular as opposed to religious education is fraught with this sort of entanglement that the Constitution forbids."); *Presbyterian*

Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S.Ct. 60, 21 L.Ed.2d 658 (1969) (First Amendment prohibits civil courts from interpreting the importance of those doctrines to the religion). While the Tax Court's interpretation of section 170 could require the government to make administrative contacts with religious institutions to determine the prices the institutions have set on various religious and secular services, such administrative contact, unlike doctrinal entanglement, does not violate the First Amendment. *See Walz*, 397 U.S. at 698, n. 1, 90 S.Ct. at 1426 n. 1 (Harlan, J., concurring) (Government administration of the property tax exemption does not violate the Establishment Clause because although it involves the government in religious institutions, it does not involve "judicial inquiry into dogma and belief."); *see also Lynch v. Donnelly*, 104 S.Ct. at 1364 ("Entanglement is a question of kind and degree.")

For all these reasons we conclude that section 170, both on its face and as interpreted by the Tax Court, complies with the commands of the Establishment Clause.

IV. The Free Exercise Claim

It is clear that while the First Amendment does not require the government to provide a tax deduction for gifts to religious and other charitable institutions, *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 546, 103 S.Ct. 1997, 2001, 76 L.Ed.2d 129 (1983), once the it has created such a tax benefit, the government may not condition receipt of the benefit upon the abandonment of religious beliefs or practices. *Hobbie v. Unemployment Appeals Commission of Florida*, —— U.S. ——, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987); *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 717-18, 101 S.Ct. 1425, 1431-32, 67 L.Ed.2d 624 (1981); *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). As the Su-

preme Court explained in *Thomas* and recently reaffirmed in *Hobbie*,

> [w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nontheless substantial.

Thomas, 450 U.S. at 717-18, 101 S.Ct. at 1432; *quoted in Hobbie*, 107 S.Ct. at 1049.

Hernandez attempts to fit this case into the framework established in *Sherbert, Thomas, and Hobbie* by arguing that the Tax Court conditioned his receipt of a charitable deduction for auditing and training payments upon his abandonment of the practice of a Scientology doctrine known as the "Doctrine of Exchange."[11] This doctrine, according to Hernandez, "holds that a person who does not make a contribution in exchange for something of value received will suffer spiritual decline." Appellant's brief at 27. Hernandez further asserts that 'the fixed donations' at issue in this case were established by the Church for its religious services . . . [and are] mandated by the Doctrine of Exchange." *Id.* He claims that only if he and his church abandon the Doctrine of Exchange—specifically the doctrine's requirement that the Church fixed prices for training and auditing services—can he obtain the economic benefit of a tax deduction for his auditing and training payments.[12]

[11] Hernandez also argues that the Tax Court conditioned his receipt of a tax deduction upon abandonment of his church's practice of individual, as opposed to congregational ministration. Since we have already observed that the individual nature of the training and auditing sessions played no role in the Tax Court's decision to disallow the deduction, *see supra* p. 1219, we reject this claim as groundless.

We have had some difficulty evaluating this claim. Some of our difficulty stems from discrepancies in the record concerning whether the requirement of fixed mandatory payments for training and auditing comes from religious doctrine or instead from more earthly administrative concerns. Though Hernandez asserts in his brief that the Church's requirement of fixed payments for training and auditing services is mandated by the Doctrine of Exchange, evidence in the stipulated record is inconsistent with that claim. In the *Graham* trial, Petitioner Katherine Graham explained the Doctrine of Exchange as follows:

> Well, basically, what it is is that there is flows, there is an inflow and an outflow. And if you just inflow everything and don't outflow anything, it just, it doesn't work, because eventually you will stop inflowing. In order to feel good about things, the things that you inflow, you have got to flow things out, *and it doesn't have to be money for something else, it can be anything, you know.* And its basically that is what is called exchange.
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> . . . .

[12] Hernandez has not argued that the Doctrine of Exchange prohibits him from making contributions over and above the fixed prices for training and auditing or from making other nonmandatory, nonfixed payments without receiving commensurate compensation. Thus, it appears that Hernandez is free to give "gifts," as that term has been interpreted by the Tax Court, to his church as well as to other qualified charitable organizations, and to deduct these gifts from his taxable income under section 170 without abandoning or compromising any of his religious beliefs or practices. Indeed, the record indicates that Hernandez claimed and was allowed a sixty-dollar deduction from his 1981 taxable income for other contributions to qualified organizations. Supplemental Appendix at 6.

> . . . I got Scientology auditing and I got the training. I then turned around and became more responsible and became a Girl Scout leader and flowed into the community, my help. It just—the better you become, the more able you become, the more responsible you become, the more you flow out again to things like your job, your whatever.

II Stipulated Record at 297-98 (emphasis added). Graham also testified that the Church provides some services—such as Sunday services where ministers deliver sermons, "naming" or christening ceremonies, and Friday fellowship meetings—for free. II Stipulated Record at 262-63, 275, 296. Thus, while the record indicates that the Doctrine of Exchange requires some "outflow" in exchange for services, it does not indicate that the doctrine requires "outflow" in the form of fixed monetary payments to the Church. Since the evidence in the record does not support the assertion in appellant's brief that the mandatory and fixed nature of the payments for services in this case were required by the Doctrine of Exchange, it is unclear to this court whether Hernandez's Free Exercise claim can legitimately be based on that religious doctrine. Indeed, if the Doctrine of Exchange does require Hernandez to pay an amount set by the Church for religious services, a tax deduction—an indirect subsidy returning part of that payment to him—would appear to compromise rather than to accommodate his practice of that doctrine.

These inconsistencies between the record and the assertions in appellant's brief to this court give us pause. The Supreme Court has held that conduct stemming from religious doctrine concerning the religious education and upbringing of children, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); sabbatarian observance, *Hobbie*, 107 S.Ct. at 1049; religious dress, *Goldman v. Weinberger*, 475 U.S. 503, 106 S.Ct. 1310, 89 L.Ed.2d 478 *Thomas*, 450 U.S. at 707, 101 S.Ct. at

1425; *Gillette v. United States*, 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971), is to be protected against all but compelling government interests. But to contemplate a particular sect's administrative or accounting modus operandi—here, the "fixed donation" system—as religious conduct sufficient to force the government to demonstrate an overriding compelling interest seems to us to trivialize the Free Exercise clause, by expanding its application in a way not remotely contemplated at any time in our history. *See Bowen v. Roy*, —— U.S. ——, 106 S.Ct. 2147, 2156 n. 17, 90 L.Ed.2d 735 (1986). Without adequate record support for this allegedly doctrinal claim, it seems "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Thomas*, 450 U.S. at 715, 101 S.Ct. at 1431.

However, even if we assume that the fixed payments in this case were mandated by religious doctrine and that Hernandez's receipt of an income tax deduction for those payments would not infringe upon his practice of that doctrine, we doubt that by taking the fixed and mandatory nature of the payments into account in determining that they were not gifts the Tax Court burdened Herdandez's religious beliefs or practices in any constitutionally significant way. The Supreme Court cases Hernandez relies upon indicate that laws distributing government benefits trigger strict scrutiny when their indirect economic effects can be seen as pressuring individuals to violate their religious beliefs or practices. *Hobbie*, 107 S.Ct. at 1049; *Thomas*, 450 U.S. at 718, 101 S.Ct. at 1432; *Sherbert*, 374 U.S. at 404, 83 S.Ct. at 1794. We doubt that such a burden exists in this case.

It is of course true that if his claimed deduction for nongift payments for religious services were allowed, Hernandez would have more money. He could, as he suggests in his brief, use this money to purchase more auditing and training; he could use it to purchase secular

goods and services. Thus, it is clear that disallowance of the deduction has economic consequences for him. What Hernandez has failed to show is that on the facts of this case, the economic consequences, like those in *Sherbert*, *Thomas*, and *Hobbie*, put "substantial pressure on [him] to modify his behavior and violate his beliefs." *Thomas*, 450 U.S. at 718, 101 S.Ct. at 1432.

The claimant in *Sherbert* was fired from her job for refusing to work on her religious sabbath. The Supreme Court held that the state's subsequent denial of unemployment benefits

> force[d] her to choose between following their precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Government imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [her] for her Saturday worship.

Sherbert, 374 U.S. at 404, 83 S.Ct. at 1794. Similarly, in *Thomas* a state denied unemployment benefits to a man who was fired for refusing to participate in the production of armaments in violation of his religion. The Court observed:

> "Not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of . . . religion, but the pressure upon [the employee] to forego that practice is unmistakable."

Thomas, 450 U.S. at 717, 101 S.Ct. at 1432 (quoting *Sherbert*, 374 U.S. at 404, 83 S.Ct. at 1794).

In contrast, it is difficult to see how the denial of the tax deduction at issue in this case could be seen as pressuring *Hernandez* to abandon his practice of paying "fixed donations" for training and auditing services in accordance with the Doctrine of Exchange. While Sherbert had the option of abandoning her practice of not working on Saturdays, and Thomas had the option of abandoning his practice of not producing armaments, Hernandez does not have the option of obtaining auditing and training without paying the fixed mandatory prices: the Church has offered him the services only in exchange for the advertised prices. Given the fact that Hernandez does not have the authority to avoid the fixed donation system that the Church has established for training and auditing services, the law in this case cannot fairly be seen as exerting substantial pressure upon him to do so.

Hernandez does argue that the government's disallowance of his claimed deduction pressures a *third party*, namely, the Church of Scientology, to abandon its practice of the Doctrine of Exchange with respect to training and auditing. The argument proceeds as follows: The Church's fixed price schedule for training and auditing, which is mandated by the Doctrine of Exchange, creates the presumption that payments for training and auditing are not tax deductible gifts under the Code. Since the Church relies on its members for financial support, the deductibility of the practicing members' donations to the Church is important to the Church's economic well-being. Thus, the Tax Court's interpretation of section 170 places economic pressure upon the Church to abandon the fixed donation system mandated by the Doctrine of Exchange.

The problem with this argument is that it is based upon the Church's Free Exercise rights rather than upon any rights possessed by Hernandez. Hernandez has not argued that his own religious beliefs or practices would be burdened if the Church were to abandon its fixed price schedule for training and auditing. He does not claim that he needs a fixed price schedule to practice the Doctrine of Exchange with respect to training and auditing. Therefore, so long as the Church continued to provide Hernandez with training and auditing services—and he has not argued that abandonment of the fixed donation

system would result in the termination of such services [13] —Hernandez would be free to practice the Doctrine of Exchange by contributing money in return.

The general rule is that "a litigant may only assert his own constitutional rights or immunities." *McGowan v. Maryland*, 366 U.S. at 429, 81 S.Ct. at 1107 (citing *United States v. Raines*, 362 U.S. 17, 22, 80 S.Ct. 519, 523, 4 L.Ed.2d 524 (1960)). Hernandez has not argued that the Church cannot adequately assert its own First Amendment rights. *Compare Bob Jones University v. United States*, 461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983) (where religious institutions raised their own Free Exercise claims); *with N.A.A.C.P. v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958) (where organization was granted standing to raise the rights of its members who could not practically protect their own interests). Nor has he presented any other countervailing interests which would justify an exception to the general standing requirements. Thus, even if there were merit to the argument that section 170 unconstitutionally burdened the Free Exercise rights of the Church of Scientology, Hernandez lacks standing to make the argument.[14]

Hernandez has failed to show that the disallowance of his claimed deduction communicates any disfavor for his religious beliefs or practices. In being allowed a tax de-

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[13] Indeed, even if Hernandez had made this argument, any causal link between the disallowance of Hernandez's claimed tax deduction and the possibility that the Church might, at some point in the future, decide to stop providing training and auditing services would be too speculative to invoke the federal judicial power. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976).

[14] Although our view on the merit of this argument is technically dictum, we observe that any indirect economic burden on the Church's fixed donation system would certainly be outweighed by the compelling government interests discussed *infra* at 1225.

duction for gifts but not for nongift payments for services, Hernandez is receiving the same treatment as all taxpayers who obtain tax deductions for gifts but not for payment of fixed mandatory prices for religious or secular services. No special treatment of his nongift payment is warranted, for special treatment of religious claims is appropriate only where it is necessary to lift a government burden disfavoring religion. *See Wallace v. Jaffree*, 472 U.S. at 83, 105 S.Ct. at 2504 (O'Connor, J., concurring); *Bowen v. Roy*, 106 S.Ct. at 2163-64 (Stevens, J. concurring). The accommodation ordered by the Supreme Court in *Sherbert*, *Thomas*, and *Hobbie*—"the provision of unemployment benefits generally available within the State to religious observers who must leave their employment due to an irreconcilable conflict between the demands of work and conscience"—was no more than a requirement of neutrality in the face of religious differences. *Hobbie*, 107 S.Ct. at 1051 & n.11. Since Hernandez has not demonstrated that section 170 as interpreted by the Tax Court disadvantages him vis-a-vis other taxpayers making payments for religious or secular services, or that it communicates hostility toward the Scientology religion, his payments for religious services must receive the same treatment under the Code as all taxpayer *quid pro quo* payments for secular or religious services.

For the above-stated reasons, we conclude that Hernandez has not demonstrated that the Tax Court's interpretation of section 170's "contribution or gift" requirement burdens religiously mandated conduct. But if we are wrong, then we think the dimensions of such conduct have been so enlarged that government's compelling interests both in preserving the integrity of its system of financing itself and in preventing the establishment of religion justify the incidental impingement. For if sects could set up their own definitions of gifts, income, depreciation, exempt activities, etc., thereby requiring the gov-

ernment to provide them with preferential subsidies, both the fairness and the effectiveness of the revenue system would be crippled. *See United States v. Lee*, 455 U.S. 252, 259, 102 S.Ct. 1051, 1056, 71 L.Ed.2d 127 (1982) (quoting *Braunfeld v. Brown*, 366 U.S. 599, 606, 81 S. Ct. 1144, 1147, 6 L.Ed.2d 563 (1961)) ("[T]here is a point at which accommodation would 'radically restrict the operating latitude of the legislature.'"). And if the government were lured into granting special tax deductions because of particular special tax deductions because of particular religious beliefs but for no other reasons, it would run up against the Establishment clause prohibition of religious endorsement. *Estate of Thornton v. Caldor, Inc.*, 472 U.S. at 703, 105 S.Ct. at 2914. Granting special tax deductions for nongift payments for religious services would also undercut the legislative goal of encouraging gifts to charitable organizations: if taxpayers could obtain the charitable contribution tax benefit by making payments in exchange for services, they would lose some incentive to make payments without consideration for the use of charitable organizations. The goal of encouraging gifts to charitable organizations seems to us at least as important as a state's interest in declaring Sunday a uniform day of rest, an interest which the Supreme Court has held to be compelling enough to justify an indirect economic burden upon those who observe a Saturday sabbath. *Braunfeld v. Brown*, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961). For these reasons, we conclude that the disallowance of the tax deduction in this case does not violate the Free Exercise clause of the First Amendment.

V. The Selective Prosecution Claim

Finally, Hernandez claims that he is the victim of selective enforcement by the IRS. To establish his claim of religious discrimination under the First and Fifth amendments, he must prove that the IRS's decision to

prosecute him under section 170 was motivated by intentional discrimination against him because of his faith. *See Niemotko v. Maryland*, 340 U.S. 268, 71 S.Ct. 325, 95 L.Ed. 267 (1951). *Cf. Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). We agree with the Tax Court that Hernandez has failed to carry his burden of proving discriminatory intent on the part of the IRS.

Hernandez asserts that the administrative history of the revenue ruling denying section 170 tax deductions for auditing payments contains evidence of discrimination at work." The final version of this ruling provided that

> the taxpayer is not entitled to a charitable contribution deduction for any part of the fixed donation made to the church for the auditing courses unless the taxpayer establishes that the fixed donation exceeded the monetary value of the benefits and privileges received and that the amount claimed as a charitable contribution is the amount of such excess.

Revenue Ruling 78-189, 1978-1 C.B. 68. As evidence that this determination was the product of discriminatory animus, Hernandez points first to the fact that, although an early internal draft of the ruling contained an acknowledgement that "[t]he question presented is a close one," this sentence was deleted from the final version. We disagree that this drafting process demonstrates religious bias. The fact that the IRS considered the question to be a close one and evaluated the merits of other possible resolutions suggests to us that the IRS attempted to reach a fair and correct result. We find no basis for inferring that the deletion of the quoted sentence from the final draft was anything other than a stylistic choice.

We also reject Hernandez's claim that the IRS's attempts to compare auditing to other types of services—secular and religious—and to reconcile the ruling with

its other revenue rulings under section 170 demonstrate anti-Scientology animus. The analogies to counselling and educational services, even if inexact, do not suggest bias. Like the acknowledgment that the question was "close," the internal IRS memorandum stating that an early draft of the revenue ruling was "pretty hard to distinguish" from another revenue ruling provides no basis from which to infer discriminatory bias.

Finally, Hernandez claims that intentional religious discrimination against him is evidenced by the asserted fact that the Commissioner has neither applied nor ever attempted to apply section 170 to disallow deduction of payments for religious services by members of any other religion. His assertion is plainly wrong. In *Feistman v. Commissioner*, 30 T.C.M. (CCH) 590, 59 (1972), for example, the Commissioner obtained a ruling that a payment made in exchange for a Bas Mitzvah was not deductible as a charitable contribution under section 170.[15] Similarly, cases like *Oppewal*, 468 F.2d at 1000, *Winters*, 468 F.2d at 778, and *DeJong*, 309 F.2d at 373, demonstrate that the Commissioner has prosecuted and obtained deficiency judgments against persons claiming deductions for religious education regardless of their particular religious faith. Thus, this case is different from cases like *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828 (1953), and *Niemotko v. Maryland*, 340 U.S. 268, 71 S.Ct. 325, 95 L.Ed.2d 267 (1951) in which neutral laws were enforced against Jehovah's Witnesses, but not against other religious sects, because of

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[15] *See also* Rev.Rul. 76-232, 1976-1 C.B. 62: Participants in a weekend marriage seminar conducted by a charitable organization are not entitled to charitable contribution deduction for any part of a donation made to the organization at the conclusion of the seminar unless the participants establish that the amount donated exceeds the monetary value of all benefits and privileges received and that the amount claimed as a charitable contribution is the amount of such excess.

"the dislike which the local officials had of these people and their views." *Fowler*, 34 U.S. at 69, 73 S.Ct. at 527.

Equally meritless is Hernandez's claim that he is similarly situated to persons who have been allowed to deduct contributions to religious organizations made in the form of collection plate offerings or bequests for masses. *See Nelson v. Commissioner*, T.C.M. (CCH) 172 (1948), *aff'd per curiam*, 177 F.2d 203 (6th Cir.1949) (collection plate offerings); A.R.M. 2, 1 C.B. 150 (1919) (basket contributions); Rev.Rul. 78-366, 1978-— C.B. 241 (bequests for masses). Unlike the payments Hernandez made in exchange for training and auditing services, offering plate contributions are not fixed mandatory payments made in exchange for discrete services. Similarly, while the payment Hernandez made were prerequisites to his obtaining training and auditing service the payment involved in Rev.Rul. 78-366 was held to be a gift precisely because the mass would have been said as a regular part of the church's ceremony whether or not any payment had been made. The facts distinguishing this case--payment of an amount set by the Church as a prerequisite to obtaining specific services—are significant, for they created the presumption, unrebutted by Hernandez, that his payments were not "contribution[s] or gift[s]" within the meaning of the Code.

While we have some doubt as to the continuing validity of the presumption in Rev.Rul. 70-47, 170-1 C.B. 39, that pew rents and mandatory church dues are tax deductible gifts, we cannot say that the IRS distinguished those payments from the ones in issue here on the basis of religious prejudice. The IRS found significance in the fact that unlike collective worship services obtained in exchange for pew rents and, to a large degree, membership dues, auditing and training services are performed in private sessions. We have recognized that if a person pays a fixed mandatory price in exchange for services, the collective or individualized nature of those services is

irrelevant to the question of whether the payment is a gift. *See supra* p. 1219. But we agree with the Tax Court that Hernandez has failed to demonstrate that the distinction drawn by the IRS was pretextual rather than sincere and that the real basis for disallowing the deduction in this case was religious discrimination. II Stipulated Record at 181-82. Accordingly, we agree with the Tax Court's conclusion that Hernandez has failed to prove his charge of selective prosecution.

VI. Conclusion

For the reasons stated, we find that Hernandez has failed to prove that his payments to the Church of Scientology for auditing and training services are tax deductible "charitable contributions" within the meaning of the Internal Revenue Code. 26 U.S.C. § 170(c). We further hold that section 170, both on its face and as interpreted by the Tax Court, complies with the Establishment and Free Exercise clauses of the First Amendment. Finally, we conclude that the record in this case does not support the claim that Hernandez is a victim of religious discrimination by the IRS.

The tax law as applied in this case communicates no endorsement or disapproval of any religion and creates no excessive government entanglement with religious institutions. Nor does it discourage the belief in or practice of religion. Under these circumstances, the Constitution does not permit preferential treatment of religion or allow religious organizations to interfere with the sovereign's evenhanded system of financing itself. The hard fact is that although one may not consider Caesar supreme, there are some things that must be rendered unto him.

The judgment of the Tax Court is affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1276

ROBERT L. HERNANDEZ,
Petitioner, Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent, Appellee.

DECREE

Entered: June 1, 1987

This cause came on to be heard on appeal from the United States Tax Court and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the tax court is affirmed.

By the Court:

/s/ Francis P. Scigliano
Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1276

ROBERT L. HERNANDEZ,
Petitioner, Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent, Appellee.

Before

Campbell, *Chief Judge*,
Coffin, Bownes, Breyer, Torruella, Selya, *Circuit Judges*,
and Gignoux,* *Senior District Judge*.

ORDER OF COURT

Entered: July 15, 1987

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the Court en banc,

It is ordered that the petition for rehearing and the suggestion for rehearing en banc be denied.

By the Court:

/s/ Francis P. Scigliano
Clerk

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* Of the District of Maine, sitting by designation.

APPENDIX D

UNITED STATES TAX COURT

Docket Nos. 5837-76, 9384-79, 374-80
Filed October 15, 1984

KATHERINE JEAN GRAHAM, *et al.*,[1]
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Held: The payments made by petitioners to the various churches of Scientology were not charitable contributions within the meaning of sec. 170(c), I.R.C. 1954. The remittances were made with the expectation of receiving a benefit, and such benefit was received. Thus, the transfers were in reality a quid pro quo. *Held, further*, denial of the claimed deductions did not violate any of petitioners' constitutional rights.

Robert N. Harris, Christopher Cobb, and *John E. Taussig*, for the petitioners.

James M. Kamman and *Charles Rumph*, for the respondent.

STERRETT, *Judge:* In these consolidated cases, respondent determined deficiencies in petitioners' Federal income taxes as follows:

Docket No.	*Petitioner*	*TYE Dec. 31:—*	*deficiency*	*Date of Deficiency notice*
5837-76	Katherine Jean Graham [2]	1972	$316.24	Apr. 7, 1976
9384-79	Richard M. Hermann	1975	803.00	Apr. 4, 1979
374-80	David Forbes Maynard	1977	643.00	Nov. 14, 1979

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[1] Cases of the following petitioners are consolidated herewith: Richard M. Hermann, docket No. 9384-79; David Forbes Maynard, docket No. 374-80.

[2] Petitioner Graham was unmarried during the tax year in question. Subsequently, she married, and her married name is Mrs. Elliott.

The issues before the Court are: (1) Whether payments made by petitioners to the various churches of Scientology [3] were deductible charitable contributions, and (2) whether denial of the claimed deductions would violate petitioners' constitutional rights.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulations of fact, together with the exhibits attached thereto, are incorporated herein by this reference. The parties specifically stipulated to the entire record in *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984). All relevant findings of fact and court rulings from that case will be incorporated into this opinion. Since neither party argued to the contrary, it will be assumed that the Church of Scientology continued to operate at all relevant times in the same manner as it did in *Church of Scientology of California v. Commissioner, supra.*

For purposes of this litigation only, respondent did not contest petitioners' contentions that: (1) Scientology was at all relevant times a religion; (2) each Scientology organization to which petitioners paid money was at all relevant times a church within the meaning of section 170(b)(1)(A)(i),[4] and (3) Scientology was at all relevant times a corporation described in section 170(c)(2) and exempt from general taxation under section 501(a) as an organization described in section 501(c)(3).

Petitioners' residences at the time they filed their respective petitions in this case, and the places they filed their timely income tax returns for their respective years are as follows:

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[3] For convenience, these various churches of Scientology will be referred to as either the Church of Scientology or the Church.

[4] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable years in issue.

Petitioner	*Residence*	*TYE Dec. 31—*	*Appropriate office of IRS*
Graham	Honolulu, HA	1972	Honolulu, HA
Hermann	Los Angeles, CA	1975	Fresno, CA
Maynard	Rialto, CA	1977	Fresno, CA

Petitioners were at all relevant times Scientologists. Scientology [5] teaches that the individual is a spiritual being having a mind and a body. Part of the mind, called the "reactive mind" is unconscious. It is filled with mental images that are frequently the source of irrational behavior. Through the administration of a Scientology process known as "auditing," an individual, called a "preclear," is helped to erase his reactive mind and gain spiritual competence. Auditing is also referred to as "processing," "counseling," and "pastoral counseling."

Scientologists believe that they can attain benefits from auditing and training, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT sections." The various steps or degrees of accomplishment are set forth in a chart entitled "Classification Graduation and Awareness Chart of Levels and Certificates."

A trained Scientologist, known as an "auditor," administers the auditing. He is aided by an electronic device called an "E-meter." This device helps the auditor identify the preclear's areas of spiritual difficulty by measuring skin responses during a question and answer session. These auditing sessions are offered in fixed blocks of time called "Intensives."

One of the tenets of Scientology is that anytime a person receives something, he must pay something back. This is called the doctrine of exchange. The Church of Scientology applies this doctrine by charging a "fixed

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[5] For an indepth review of the Scientology religion and its structure, see *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984).

donation" for training and auditing. With few exceptions, these services are never given for free.[6] Thus, fixed donations are generally a prerequisite to a person's receiving auditing and training. These fixed donation payments constitute the majority of the Church of Scientology's funds, and are used to pay the costs of church operations and activities.

The general rates of the fixed donations for auditing in 1972 were as follows:

12½-Hour intensive	$ 625
25-Hour intensive	1,250
50-Hour intensive	2,350
75-Hour intensive	3,350
100-Hour intensive	[7]4,250

In addition, the Church of Scientology offered two specialized types of auditing for a higher fixed donation—

Integrity Processing	$750 per 12½-Hour intensive
Expanded Dianetics	$950 per 12½-Hour intensive

Members of the Church of Scientology are encouraged to make advance payments for Scientology courses. If

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[6] The Church of Scientology has a nine-volume encyclopedia of Scientology policy called the OEC series. Hubbard Communications Office Policy Letter (HCO PL) Sept. 27, 1970 (Issue I), 3 OEC 89, describes the Church of Scientology's policy against free services and price cutting. It states:

Price cuts are forbidden under any guise.

1. PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG. Processing is too expensive to deliver.

* * * *

9. ONLY FULLY CONTRACTED STAFF IS AWARDED FREE SERVICE, AND THIS IS DONE BY INVOICE AND LEGAL NOTE *WHICH BECOMES DUE AND PAYABLE IF THE CONTRACT IS BROKEN.* [Emphais added.]

[7] Historically, the price of a 25-hour intensive was fixed at an amount equal to 3 months of pay for the average middle-class worker in the district of the Scientology Church providing the service.

payment is made well in advance of the services to be rendered, a discount of 5 percent can be obtained by the member. When a parishioner makes an advance payment, the Church credits his account. Once the individual begins receiving a service, his account is debited. It is the Church of Scientology's policy to refund advance payments upon request at any time before services are received.[8]

The Church of Scientology operates in a commercial manner in providing these religious services. In fact, one of its articulated goals is to make money. This is expressed in HCO PL March 9, 1972, MS OEC 381, 384. It sets out the governing policy of the Church of Scientology's financial offices by exhorting these offices to "MAKE MONEY. * * * MAKE MONEY. * * * MAKE MORE MONEY. * * * MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY." The goal of making money permeates virtually all of the Church of Scientology's activities—its services, its pricing policies, its dissemination practices, and its management decisions.

The Church of Scientology promotes its services through free lectures, congresses, free personality tests, and handouts. Advertisements are placed in newspapers, magazines, and on the radio. These promotional activities are geared to be responsive to community concerns, which are determined from surveys.

In 1972, Graham made payments totaling $1,682 to the Church of Scientology, Hawaii, and to the Scientology and Dianetic Center of Hawaii. Of this amount, approximately $400 went towards training, the balance went for auditing. These payments were for the Hubbard Qualified Scientologist course (HQS), Communications course, and auditing. Some of the payments toward courses were for Graham's daughters, Karen and Laurel.

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[8] No evidence was produced with respect to the actual amounts, if any, of such refunds during the tax years in issue.

When Graham made those payments, she expected to receive, and did receive, the benefit of those services. On her 1972 income tax return, Graham deducted $1,682 as a charitable contribution.

In 1975, Hermann paid the Church of Scientology, American Saint Hill Organization (ASHO) $4,875. At the time Hermann made these transfers, he expected to receive Class 0 to 9 training. While Hermann did not take these courses, he did take other Scientology courses and has received auditing between 1974 and the present. On his 1975 income tax return, Hermann deducted $3,922 as a charitable contribution.

In 1977, Maynard paid the Church of Scientology, Mission of Riverside, $4,698.91 as advance payments for services. While Maynard did not receive any services in 1977, he made those remittances with the expectation of taking Interiorization Processing, Expanded Dianetics, and auditing. On his 1977 income tax return, Maynard claimed a $5,000 [9] charitable contribution deduction.

In the respective notices of deficiency, respondent disallowed these claimed charitable contribution deductions. Respondent maintains that it was not established that the payments to the Church of Scientology were contributions or gifts rather than payments for services or merchandise.

Issue 1. Deductibility of Payments Made

The taxpayer has the burden of proving that a particular payment is a "contribution or gift." *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934); *Welsh v. Helvering*, 290 U.S. 111 (1933); Rule 142(a), Tax Court Rules of Practice and Procedure. Petitioners argue that their remittances to the Church of Scientology met the statutory requirements of section 170, subsections (a)

[9] This amount consisted of a $2,385 carryover from 1976 transfers and $2,615 for transfers in 1977.

and (c), and thus were deductible charitable contributions. Respondent maintains that those payments were not "contribution[s] or gift[s]" within the meaning of section 170(c). Rather, he insists they were made to purchase services, i.e., a quid pro quo, and thus were nondeductible personal expenditures.

Section 170(a)(1) allows as a deduction any charitable contribution payment which is made within the taxable year. Section 170(c) defines the term "charitable contribution" as "a contribution or gift." Neither section 170 nor the regulations further elaborate on the meaning of "charitable contribution." This issue was addressed, however, in *DeJong v. Commissioner*, 36 T.C. 896 (1961), affd. 309 F.2d 373 (9th Cir. 1962). There, the Court stated—

> As used in this section the term "charitable contribution" is synonymous with the word "gift." * * * A gift is generally defined as a *voluntary transfer* of property by the owner to another *without consideration* therefor. If a payment proceeds primarily from the incentive of anticipated benefit of the payor beyond the satisfaction which flows from the performance of a generous act, it is not a gift. * * * [*DeJong v. Commissioner*, *supra* at 899. Citations omitted; emphasis added.]

Petitioners wanted to receive the benefit of various religious services provided by the Church of Scientology. The Church of Scientology, however, generally provided those services only if they were purchased. To encourage such purchases, the Church of Scientology gave a 5-percent discount to parishioners who made advance payments. A person who made an advance payment but chose not to receive the services could request a refund of his money. Petitioners thus made payments to the Church in exchange for those services.

The record demonstrates clearly that these payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return. In addition, where contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo. *Haak v. United States*, 451 F. Supp. 1087, 1090-1091 (W.D. Mich. 1978).

Petitioners Graham and Hermann made payments for which they received religious services. They received a perceived benefit from their transfers. Petitioner Maynard made advance payments to the Church of Scientology. While he did not receive any religious services in 1977, his account was credited for his remittances. This credit entitled him to receipt of services in the future. It was that entitlement which constituted his receipt of a perceived benefit, or the quid pro quo.

Accordingly, none of the payments petitioners made were charitable contributions within the meaning of section 170(c). Instead, they were nondeductible personal expenditures.

Issue 2. Constitutional Arguments

Petitioners maintain that denial of the deduction interferes with their constitutional right to the free exercise of their religion. It is well established that there is no constitutional right to a tax deduction. Benefits granted to taxpayers, such as deductions for charitable contributions, are matters of legislative grace. *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593 (1943); *New Colonial Ice Co. v. Hervering*, *supra* at 440; *Winters v. Commissioner*, 468 F.2d 778, 781 (2d Cir. 1972), affg. a Memorandum Opinion of this Court. Further, denial of this deduction does not violate the free exercise clause of the First Amendment. *Parker v. Commissioner*, 365 F.2d 792, 795 (8th Cir. 1966), cert. denied 385 U.S. 1026 (1967); *Winters v. Commissioner*,

supra at 781. The constitutionality of the denial of this deduction was well stated by the Supreme Court in *Cammarano v. United States*, 358 U.S. 498, 513 (1959)—

> Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. * * *

Respondent is not precluding petitioners from engaging in constitutionally protected activities. Petitioners may practice their beliefs; they just will not be subsidized for them.

Even if denial of the deduction interfered with petitioners' practice of their religious beliefs, not all burdens on religion are unconstitutional. *United States v. Lee*, 455 U.S. 252, 257 (1982). See also, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 163-166 (1944); *Reynolds v. United States*, 98 U.S. 145, 166-167 (1878). The limitation on religious liberty can be justified by showing that it is essential to accomplish an overriding governmental interest. *United States v. Lee*, *supra* at 257-258. The Supreme Court has stated that "Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *United States v. Lee*, *supra* at 260.

Petitioners also argue that denial of the deductions violates the establishment clause of the First Amendment.[10] Their argument is twofold. First, disallowance

[10] Petitioners raised similar establishment clause arguments in *Church of Scientology of California v. Commissioner*, 83 T.C. at 447-454. While that case dealt with the constitutionality of sec. 501(c)(3), its rationale is fully applicable to sec. 170 and we incorporate herein by this reference that portion of the opinion.

would result in disparate treatment of petitioners, in violation of the neutrality requirement of the First Amendment. Second, disallowance would be the result of excessive Government entanglement with religion, in violation of the First Amendment.

Petitioners place heavy emphasis on *Larson v. Valente*, 456 U.S. 228 (1982). In that case, Minnesota had enacted a statute imposing registration and reporting requirements on religious groups which solicited more than 50 percent of their contributions from nonmembers. The Supreme Court held that the statute violated the establishment clause of the First Amendment. In so doing, they rejected an argument that the statute was facially neutral and found instead that it made "explicit and deliberate distinctions between different religious organizations." *Larson v. Valente, supra* at 247 n. 23. The Court further mentioned that "The fifty percent rule of section 309.515, subd. 1(b), effects the *selective* legislative imposition of burdens and advantages upon particular denominations." *Larson v. Valente, supra* at 253-254.

The instant case is distinguishable from *Larson* because section 170, unlike the charitable solicitation law in *Larson*, does not make classifications among religions. Furthermore, unlike *Larson*, here there is no legislative history revealing overt discrimination. Finally, even if section 170 has the effect of advancing one religion more than another, that fact alone does not make the statute unconstitutional. The establishment clause does not prohibit a statute from having a disparate impact on religious organizations provided the disparate impact results from the application of secular criteria. *Lynch v. Donnelly*, 465 U.S. ——, —— (1984); *Gillette v. United States*, 401 U.S. 437, 452 (1971); *McGowan v. Maryland*, 366 U.S. 420, 442-444 (1961). Here the tests for determining the deductibility of claimed charitable contributions are based on secular criteria. Further, *Larson* is

distinguishable from the case at bar because the section 170 classification bears equally upon all religious organizations. Thus, there is not the political divisiveness here that was prevalent in *Larson*. Accordingly, the argument of unconstitutionality under the establishment clause is rejected.

Finally, petitioners insist that denial of the claimed deductions was due to selective discriminatory action. They claim that their rights under the First Amendment and the equal protection component of the due process clause of the Fifth Amendment were violated. The evidence in this case does not demonstrate that any discriminatory action was taken against petitioners by respondent or any of his agents. Petitioners have failed to prove that violation of their rights occurred under either the First or Fifth Amendments.[11]

Decisions will be entered for the respondent.

[11] This issue of selective enforcement was also raised and rejected in *Church of Scientology of California v. Commissioner*, 83 T.C. at 453-454.

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-275

ROBERT L. HERNANDEZ,
Applicant,

v.

COMMISSIONER OF INTERNAL REVENUE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 12, 1987.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 6th day of October, 1987.

APPENDIX F

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

Docket No. 13620-84

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER AND DECISION

After due consideration of petitioner's Motion for Entry of Final Decision filed December 2, 1985, respondent's Notice of Objection filed December 23, 1985, and petitioner's Response to Notice of Objection filed January 7, 1986, and on the authority of *Graham v. Commissioner*, 83 T.C. 575 (1984), on appeal (9th Cir., Nov. 19, 1984), it is

ORDERED that petitioner's above-referenced Motion for Entry of Final Decision is granted. It is further

ORDERED and DECIDED that there is a deficiency in petitioner's income tax for the taxable year 1981 in the amount of $2,245.00.

/s/ Samuel B. Sterrett
SAMUEL B. STERRETT
Chief Judge

Entered: Mar. 6, 1986

APPENDIX G

UNITED STATES TAX COURT

Docket No. 13620-84

ROBERT L. HERNANDEZ,
Petitioner(s),

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION

It is hereby stipulated by and between Petitioner(s) and Respondent, by their respective counsel of record, that they will be bound herein by any relevant findings of fact and conclusions of law made by the Court in its opinions and decisions in three certain 'test' cases, namely, Docket Nos. 5837-76, 9384-79 and 374-80, to the extent that such findings of fact and conclusions of law shall have been actually briefed, argued and submitted in the said 'test' cases, and have been based upon stipulations and/or undisputed facts therein, excluding, however, findings of fact and conclusions of law relating to any petitioner's subjective intent.

It is understood and agreed that nothing in this stipulation, or in any order based hereon, shall in any way be construed as waiving or changing the venue of any appeal from decision herein, as provided in IRC § 7—82 (b)(1)(a); and that to the extent relevant the records in the said Docket Nos. 5837-76, 9384-79 and 374-80 shall

be deemed part of the record herein for purposes of any such appeal.

FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

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Dated: 28 Jun. 1984

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Dated: June 21, 1984

APPENDIX H

UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

[Filed Dec. 6, 1982]

STIPULATION #1

In accordance with Tax Court Rule 91, the parties hereby stipulate the matters hereinafter stated, subject to the rights of the parties to introduce other and further evidence not inconsistent herewith and reserving to each of the parties the right to object to the materiality or relevance hereof in whole or in part.

1. Petitioner maintained her legal residence at 743 Pumehana, Hawaii, at the time of the filing of the petition herein.

2. Petitioner filed a timely Federal Income Tax return for the taxable year ending December 31, 1972, a true and correct copy of which is attached hereto and marked as Joint Exhibit 1-A.

3. Petitioner's income tax return for said taxable year was examined by respondent, who, on April 7, 1976, issued a notice of deficiency, a true and correct copy of

which is attached hereto and marked as Joint Exhibit 2-B.

4. Petitioner claimed a charitable contribution deduciton under I.R.C. § 170 for $2,379.50 transferred to the Church of Scientology of Hawaii and to the Scientology and Dianetic Center of Hawaii.

5. Each of Exhibits C through Q is a document received by petitioner from the Church of Scientology of Hawaii or from the Scientology and Dianetics Center of Hawaii, reflecting transactions of petitioner with one or the other of them.

6. During November of 1972, petitioner paid $200.00 to the Church of Scientology of Hawaii for Auditing, which payment is not reflected on respondent's Exhibits C through Q.

7. The neologisms "Scientology" and "Dianetics" were introduced by L. Ron Hubbard. Mr. Hubbard wrote *Dianetics: The Modern Science of Mental Health*, which was published in 1950 and which sets forth the general principles of Dianetics and Dianetic Auditing as discovered and developed to 1950.

8. Some of the beliefs and practices of Scientology are roughly described in lay terms in *Scientology, A World Religion Emerges in the Space Age*, a book copyrighted by L. Ron Hubbard. Respondent's Exhibit R attached hereto is a true copy of said book. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

9. The Church of Scientology of Hawaii is, and is considered by the Churches of Scientology to be, a church of the kind referred to by Scientologists as a "Class IV Church" or "Class IV Org." The Scientology and Dianetics Center of Hawaii is, and is considered by Churches of Scientology to be, a church of the kind referred to by Scientologists as a "Mission."

10. There are many churches and missions in the United States and in other countries which practice, teach and promulgate Scientology. As used herein, "Churches of Scientology" refers collectively to such churches and missions, and "Scientologist" refers to members of such churches and missions.

11. The Churches of Scientology, including the Church of Scientology of Hawaii and the Scientology and Dianetics Center of Hawaii, follow common doctrines, practices and beliefs of Scientology.

12. The Churches of Scientology offer Auditing and courses to Scientologists.

13. Auditing, also variously referred to as "processing," "counselling" and "pastorial counselling," is conducted by a specially trained Scientologist, referred to as an "Auditor."

14. Auditing is generally conducted in a private session one to one, between the Auditor and the person being Audited.

15. Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology.

16. Scientologists are taught that the individual is an immortal spirit who has a mind and a body. Scientologists are also taught that the highest level of spiritual ability and awareness can be attained only by progressing on a step by step basis through lower and intermediate levels of Auditing.

17. The structure, ritual and content of each Auditing session are determined by the level of attainment of the Scientologist being Audited.

18. Some of the rituals used in Auditing include questions, commands and drills.

19. The Auditor acknowledges the response of the person being Audited, but offers no analysis of the response to the person being Audited.

20. An E-Meter is a device used in Auditing.

21. Auditing is delivered in sessions. An "Intensive" is a specific number of hours of Auditing intended to be given over a short period of time. An intensive is 12½ or 25 hours of Auditing and usually involves 12½ hours of Auditing.

22. An Auditor who conducts a session is expected to know and understand the rituals, codes, tenets and doctrines of Scientology applicable to the conduct of Auditing generally and to have mastered the particular material to be used in the session.

23. No subject matter is taught, studied or learned during an Auditing session (except that the Scientologist being Audited necessarily learns and understands the particular practice used in the session).

24. The Churches of Scientology offer courses to provide training in the doctrines, tenets, codes, policies and practices of Scientology and to train Scientologists as Auditors.

25. Training is delivered to Scientologists under the supervision of a trained Scientologist. Training is delivered in courses each of which includes specific material to be mastered by the students in order to complete the course. Courses range from basic courses which introduce the doctrines and tenets of Scientology through courses which train and qualify Auditors to deliver Auditing at the highest levels.

26. It is a doctrine of Scientology, and Scientologists are taught, that spiritual gains result from the study and understanding of the doctrines, codes and tenets of

Scientology, whether or not the student receives Auditing.

27. Scientologists believe that they can attain benefits from Auditing, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT Sections."

28. Respondent's Exhibit S attached hereto is a copy of a document headed "THE BRIDGE" which was published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

29. In contrast to Auditing, Auditor training and other courses furnished by the Churches of Scientology are instructional or educational; the student is expected to understand and learn the material which is the subject matter of the particular course he or she takes. As used herein, "course" means and refers to such services and not to Auditing. Some courses include Auditing by students and Auditing of students.

30. The Churches of Scientology deliver Auditing and training at various levels. A Scientologist who receives Auditing begins at the lowest level and progresses step by step to higher and higher levels. A Scientologist who receives training also begins at the lowest level and progresses step by step to higher and higher levels. Only Auditors who have been qualified by training at an appropriate level can deliver Auditing at that level.

31. Some of the Churches of Scientology also deliver administrator and executive training courses. The students in such courses are taught the management methods and policies of the Churches of Scientology, and are mostly staff members of the Churches of Scientology. Such courses are occasionally taken by Scientologists who are not staff members. The subject matter of such courses includes Scientology doctrines, tenets and codes

which are applicable to the administration and management of Scientology organizations.

32. The Churches of Scientology also deliver a few short courses of a general educational nature, designed to remedy educational deficiencies and to teach Scientology study methods, to enable the student to progress more rapidly in Scientology courses.

33. All of the courses offered by the Churches of Scientology are founded upon the doctrines and tenets of Scientology, in the manner of presenting the material studied and in the instructional methods.

34. The Scientology and Dianetic Center of Hawaii offers Auditing at Grades I through IV.

35. The Church of Scientology of Hawaii offers Auditing from Grade I through Grade IV and Auditor training from Class I through Class IV.

36. The Churches of Scientology have established charges for Auditing and for courses they deliver, and refer to payments of such charges as "fixed donations" or "fixed contributions." Such payments are hereinafter referred to as "fixed donations."

37. Fixed donations are sometimes made for an Intensive of 12½ or 25 hours of Auditing.

38. Respondent's Exhibit T attached hereto is a copy of a schedule of fixed donations and book order form, copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

39. Fixed donations constitute the source of most of the funds of the Churches of Scientology. Their only other source of funds is from sales of Scientology literature, tapes of lectures by L. Ron Hubbard (the founder of Scientology) and artifacts.

40. The payments made by petitioner were fixed donations.

41. The Churches of Scientology do not actively solicit contributions from their members or from the public, other than fixed donations.

42. Petitioner first became a Scientologist in 1971 when she attended activities of the Scientology and Dianetics Center of Hawaii.

43. The Hubbard Qualified Scientologist Course (HQS) is an introductory course, one purpose of which is to familiarize the student with certain basic techniques used in Auditing.

44. Respondent's Exhibit U attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

45. The Communications Course is an introductory course one purpose of which is to introduce those unfamiliar with Scientology to certain concepts of Scientology.

46. Respondent's Exhibit V attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

47. The Communications Course referred to in respondent's Exhibit H was attended by petitioner's daughter, Karen.

48. The Communications Course referred to in respondent's Exhibit I was attended by petitioner's daughter, Laurel.

49. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit J was attended by petitioner's daughter, Karen.

50. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit K was attended by petitioner's daughter, Laurel.

51. Respondent's Exhibits W through AQ attached hereto are copies of documents, each of which was published and/or copyrighted as follows:

W Two page flyer, first page headed "Knowledge Services—Books," published by ASHO (Church of Scientology of California) and copyrighted by L. Ron Hubbard.

X Booklet entitled "Scientology & Dianetics," published by Church of Scientology of California.

Y Magazine, the cover of which is missing, published by the Founding Church of Scientology of Washington, D.C. and commencing with an article entitled "The Dangerous Environment."

Z Booklet entitled "Church of Scientology Information, Definitions, Rules," copyrighted by L. Ron Hubbard.

AA Flyer Entitled "Gain Respect for Self and Others Through Scientology Training," published by the Los Angeles Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AB Flyer entitled "Your Road to Total Freedom," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.

AC Flyer commencing with excerpts titled "On Exchange," published by the San Francisco Or-

ganization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AD Flyer entitled "Scientology Auditing gives you a chance to handle your environment better," published by The Church of Scientology Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AE Booklet entitled "Your Road to Clear Goes Through ASHO Foundation," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.

AF Magazine entitled "Advance," Issue 18, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AG Magazine entitled "Advance," Issue 19, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AH Magazine entitled "Gateway," Issue 61, published by the Church of Scientology in San Francisco (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.

AI Magazine entitled "Gateway," Issue 73, published by the Church of Scientology in San Francisco (Church of Scientology of California).

AJ Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 92 Worldwide, published by New American Saint Hill Organization (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.

AK Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 91 Worldwide, published by New American Saint Hill Organization (Church of Scientology of California).

AL Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AM Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AN Magazine entitled "Clear News," Issue 107, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AO Magazine entitled "Clear News," Issue 104, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AP Magazine entitled "Realty," Major Issue 96, published by Church of Scientology of California and copyright by L. Ron Hubbard.

AQ Magazine entitled "Realty," Issue 102, published by Church of Scientology of California.

Petitioner objects to each of said exhibits on grounds of relevance, hearsay and the first amendment.

52. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that Scientology was at all relevant times a religion.

53. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that each Scientology organization to which

petitioner paid money was at all relevant times a church within the meaning of I.R.C. § 170(b)(1)(A)(i), a corporation described in I.R.C. § 170(c)(2) and exempt from general income taxation under I.R.C. § 501(a) as an organization described I.R.C. § 501(c)(3).

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APPENDIX I

A.R.M. 2, 1 C.B. 150 (1919)

Section 214 (a) 11, Article 251: Charitable contributions.

The Committee is of the opinion that the distinction of pew rents, assessments, church dues, and the like from basket collections is hardly warranted by the act. The act reads "contributions" and "gifts." It is felt that all of these come within the two terms.

In substance it is believed that these are simply methods of contributing, although in form they may vary. Is a basket collection given involuntarily to be distinguished from an envelope system, the latter being regarded as "dues"? From a technical angle, the pew rents may be differentiated, but in practice the so-called "personal accommodation" they may afford is conjectural. It is believed that the real intent is to contribute and not to hire a seat or a pew for personal accommodation. In fact, basket contributors sometimes receive the same accommodation informally. On these grounds, the Committee is of the opinion that ordinarily and customarily pew rents, as well as so-called assessments and so-called dues, are to be regarded as contributions.

It is accordingly recommended that this interpretation be adopted.

Supreme Court, U.S.
FILED
MAR 14 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-963

In the Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

1. Whether a payment to the Church of Scientology for auditing or training sessions is deductible from taxable income as a "contribution or gift" under Section 170 of the Internal Revenue Code.

2. Whether the First Amendment requires that such a payment be deductible from taxable income.

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-28a) is reported at 819 F.2d 1212. The decision and order of the Tax Court (Pet. App. 43a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 29a) was entered on June 1, 1987. A petition for rehearing was denied on July 15, 1987 (Pet. App. 30a). On October 6, 1987, Justice Brennan extended the time within which to file a petition for a writ of certiorari to and including December 12, 1987, and the petition was filed on December 11, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner paid $7,338 to a branch of the Church of Scientology in 1981 and claimed that payment as a charitable deduction on his federal income tax return under Section 170 of the Internal Revenue Code,[1] which permits a deduction for a "contribution or gift" to certain eligible donees (see I.R.C. § 170(c)). On audit, the Commissioner disallowed that deduction and determined a tax deficiency of $2,245 (Pet. App. 1a-2a). Petitioner filed a petition in the Tax Court for review of the Commissioner's determination. There was no trial in the Tax Court, however, nor any other evidentiary submission. Instead, the parties entered into a stipulation to be bound by "any relevant findings of fact or conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in three consolidated "test cases" that were to be tried. The stipulation further provided that the record in the test cases, "to the extent relevant," would be deemed part of the record in this case for the purpose of appeal. See Pet. App. 3a, 44a-45a.[2] After the Tax Court decided the "test cases" in favor of the Commissioner (*Graham* v. *Commissioner*, 83 T.C. 575 (1984), aff'd, 822 F.2d 844 (9th Cir. 1987), *reprinted in* Pet. App. 31a-41a), the court entered a decision and order in the instant case "on the authority of *Graham*," finding a deficiency of $2,245 (Pet. App. 43a).

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[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

[2] The government entered into the same stipulation with numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of a charitable deduction for payments to the Church of Scientology.

2. In the *Graham* case, the Tax Court entered findings of fact pertaining to the general operation of the Church of Scientology. Like petitioner, each taxpayer in *Graham* had made payments to a branch of the Church of Scientology[3] and had sought to deduct them on his or her income tax return as charitable contributions (Pet. App. 35a-36a). These payments were made in exchange for "auditing" and "training" services provided by the Church. Scientologists believe that auditing helps an individual to achieve a higher level of "spiritual competence." Auditing is administered in a one-to-one session by a trained Scientologist who asks the auditee questions and measures his skin responses during the answers by means of an electronic device. "Training" courses study the doctrines of Scientology and are believed to yield further spiritual benefits. See *id.* at 33a; see also *id.* at 2a nn.1 & 2.

The Church charges a "fixed donation" for training and auditing, which is almost never waived.[4] The Church "operates in a commercial manner" in providing these services (Pet. App. 35a). It promotes its services through lectures and radio and newspaper advertising. It gives a standard discount for payments made well in advance of the services to be rendered, and it issues refunds of those payments if the services ultimately are not received. *Id.* at 34a-35a.

In addition to these findings, the *Graham* decision was based on certain stipulations concerning the Church

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[3] The Church of Scientology consists both of a central branch, the "mother" Church of Scientology of California, and of numerous branches that are separate entities for tax purposes.

[4] Indeed, the Church's official policy letter states that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 34a n.6). Free services are awarded only to fully contracted staff, on the condition that the staff member fulfill the terms of his contract (*ibid.*).

entered into for purposes of that litigation (see Pet. App. 46a-56a). The government did not contest that Scientology is a religion and that each Scientology organization to which the taxpayers paid money is a church within the meaning of Section 170(b)(1)(A)(i) of the Code and a tax-exempt religious organization under Section 501(c)(3) of the Code that is an eligible donee of charitable contributions under Section 170(c)(2) of the Code. Pet. App. 32a.[5]

After making these factual findings, the Tax Court in *Graham* ruled that the payments in question were not contributions, but rather were non-deductible payments made to purchase services (Pet. App. 36a-38a). The court explained that the payments "were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return" (*id.* at 38a). The court continued (*ibid.*): "[W]here contributions are made with the expectation of receiving a benefit, and such

[5] The question of the validity of the "mother" Church's tax exemption was the subject of separate litigation in the Tax Court. The parties entered into the stipulations here in order to allow *Graham* and the other charitable contribution cases to go forward without awaiting the result of the tax exemption litigation, which would not necessarily affect the outcome of those cases. It was further stipulated in *Graham*, however, that the findings of fact in the tax exemption litigation and the record there could be incorporated in the *Graham* opinion (Pet. App. 32a). After a lengthy trial, the Tax Court ultimately held that the "mother" Church failed to qualify as an exempt organization for the years 1970-1972 because it diverted its profits to its founder and other persons, violated public policy by conspiring to impede the collection of taxes, and conducted virtually all of its activities, including auditing and training, for a commercial purpose. See *Church of Scientology* v. *Commissioner*, 83 T.C. 381, 415-423, 473-480 (1984), aff'd, 823 F.2d 1310 (9th Cir. 1987), petition for cert. pending, No. 87-1377. That determination is not necessarily controlling, however, for other tax years or for other branches of the Church.

benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo." The court also rejected the contention that the denial of the deduction violated the First Amendment (*id.* at 38a-41a).

3. In the present case, the court of appeals affirmed the Tax Court's decision in the Commissioner's favor that had been entered on the authority of *Graham* (Pet. App. 1a-28a). The court stated (*id.* at 5a) that its inquiry into whether the payments were "contribution[s] or gift[s]" within the meaning of Section 170 of the Code was framed by this Court's recent analysis of that question in *United States* v. *American Bar Endowment*, 477 U.S. 105, 118 (1986): "The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return." The court rejected petitioner's contention that this inquiry into whether a particular payment was a contribution or, instead, part of a quid pro quo arrangement did not apply to payments for religious services. The court stated (Pet. App. 6a): "We find no indication that Congress intended to distinguish the religious benefits sought by [petitioner] from the medical, educational, scientific, literary, or other benefits that could likewise provide the *quid* for the *quo* of a nondeductible payment to a charitable organization." Relying on the factual findings in *Graham*, the court concluded that petitioner had not demonstrated that the payments in question were in fact charitable contributions (*id.* at 8a-9a).

The court also rejected petitioner's constitutional claims (Pet. App. 9a-28a). The court held that Section 170 does not create any denominational preferences on its face (Pet. App. 9a-10a) or as applied in this case (*id.* at 10a-15a). The

court explained that the statute is neutral; "gifts to all charitable organizations are tax deductible; *quid pro quo* payments are not" (*id.* at 14a). The court also held that the denial of a deduction did not violate petitioner's right under the Free Exercise Clause to make "fixed donations" in exchange for auditing and training classes (*id.* at 15a-24a), and that petitioner had not shown that he was the victim of selective prosecution in connection with the denial of the claimed deduction (*id.* at 24a-28a).

DISCUSSION

1. While we disagree with petitioner that the court of appeals erred in affirming the denial of his claimed deduction, we agree that there exists a conflict in the circuits on the statutory question presented. Accordingly, we do not oppose the petition with respect to that question. The decision below, along with two other court of appeals decisions, conflicts with the decision of the Eighth Circuit in *Staples* v. *Commissioner*, 821 F.2d 1324 (1987), petition for cert. pending, No. 87-1382. Because of the stipulation to be bound by the findings of a test case, which was entered into by the parties in numerous cases where the taxpayers, like petitioner, are seeking to take a tax deduction for certain payments made to the Church of Scientology (see page 2, *supra*), there have now been four decisions issued by different courts of appeals that have considered the statutory question presented here on the basis of the same findings of fact. Three courts of appeals, including the court below, have held that these payments are not contributions within the meaning of Section 170 of the Code. See *Graham* v. *Commissioner*, 822 F.2d 844 (9th Cir. 1987); *Miller* v. *Commissioner*, 829 F.2d 500 (4th Cir. 1987), petition for cert. pending, No. 87-1449. But the Eighth Circuit in *Staples* has held that these payments are

deductible contributions. These conflicting holdings, if permitted to stand, will result in disparate tax treatment for similarly situated taxpayers.

The Eighth Circuit in *Staples* rested its decision on a legal proposition that was flatly rejected by the court below. The Eighth Circuit concluded that, under the stipulation, the auditing and training received in exchange for the payments made by petitioner must be viewed as "strictly religious practices" (821 F.2d at 1326, 1328). It then held that, as a matter of law, participation in such religious practices cannot be treated as "a recognizable return benefit" for purposes of determining whether a particular payment is a contribution (*ibid.*). For that reason, the court found "inapplicable" (*id.* at 1328) the analysis set forth by this Court in *United States* v. *American Bar Endowment*, 447 U.S. 105, 118 (1986), for determining whether a payment is a contribution under Section 170 of the Code (see page 5, *supra*). The broad rule advanced by the Eighth Circuit—excepting payments for religious services from the analysis applicable to all other claims for a tax-deductible contribution—cannot be squared with the decision below, which specifically rejected this proffered exception and held the *American Bar Endowment* analysis fully applicable. See Pet. App. 5a; see also *Graham*, 822 F.2d at 849 ("the deductibility of a contribution does not depend on whether the benefits received in return are secular or religious"); *Miller*, 829 F.2d at 504 ("no justification * * * for drawing a distinction between 'religious' and other services that produce intangible benefits"). Indeed, the court of appeals in *Staples* expressly acknowledged its "difference with the First Circuit" in *Hernandez* on this point (821 F.2d at 1327).

2. Because of the stipulations entered into between the taxpayers and the government in the cases presenting the

issue decided below, only the Ninth Circuit's decision in *Graham* was based on an actual record that contains findings of fact directly pertaining to the case before the court. We believe that it would be preferable for this Court to consider the statutory question presented here, if possible, in the concrete factual context that exists in *Graham*, rather than in the situation that exists in the cases, like this one, that were decided in the Tax Court on the basis of a stipulation to be bound by the findings in *Graham*. A petition for a writ of certiorari in *Graham* is due in this Court, on one extension, on March 30, 1988, and counsel for the taxpayers in that case (who is also counsel for the petitioner here) has informally advised us that he intends to file a petition by that date. We do not intend to oppose that petition. Accordingly, although we believe that resolution by this Court of the conflict in the circuits on the statutory question presented here would be appropriate, we do not urge the Court to grant plenary review in this case, but rather suggest that this case be held pending disposition of the petition to be filed in *Graham*.

3. In addition to his contention (Pet. 10-24) that the court of appeals erroneously interpreted Section 170 of the Code, petitioner briefly argues (Pet. 25-27) that the denial of his claimed deduction violates the First Amendment. This contention was correctly rejected by the court of appeals and by all the other courts of appeals that have considered it. In the absence of a conflict in the circuits, there is no reason for this Court to review this unmeritorious contention.

The thrust of petitioner's First Amendment claim appears to be the assertion that denial of his claimed deduction reflects a "denominational preference" (Pet. 25). There is no basis for this assertion. Section 170 is neutral; it permits gifts to qualifying organizations to be deducted, but

payments to such organizations that are not gifts are not deductible. The Revenue Ruling to which petitioner refers (Pet. 27) that recognizes "pew rents" and "church dues" as "ordinarily" deductible contributions was based on the conclusion that "the real intent is to contribute and not to hire a seat or a pew for personal accommodation" (A.R.M. 2, 1 C.B. 150 (1919), *reprinted in* Pet. App. 57a). Petitioner has laid no factual predicate for invoking that ruling. The factual finding in *Graham* was that auditing and training payments were "not voluntary transfers," but "were made with the expectation of receiving a commensurate benefit in return" (Pet. App. 38a), and petitioner has not disputed that he was in that respect similarly situated to the *Graham* taxpayers. Nor has petitioner shown or claimed that that ruling has not been applied equally to pew or membership fees for churches of all denominations, including the Church of Scientology. Accordingly, there is no basis for concluding that the denial of petitioner's claimed deduction proceeded from any discrimination among religions that would raise First Amendment concerns. The courts have correctly rejected the constitutional claims in this case and similar cases, and there is no reason for this Court to review them. See Pet. App. 10a-28a; *Miller*, 829 F.2d at 505-506; *Graham*, 822 F.2d at 850-853.

CONCLUSION

The petition for a writ of certiorari should be disposed of as appropriate in light of the disposition of the pending petition for certiorari in *Commissioner* v. *Staples,* No. 87-1382, and the petition for a writ of certiorari to be filed from the judgment in *Graham* v. *Commissioner,* 822 F.2d 844 (9th Cir. 1987).

Respectfully submitted.

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MARCH 1988

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No. 87-963

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

REPLY BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-963

ROBERT L. HERNANDEZ,
Petitioner,

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

REPLY BRIEF FOR PETITIONER

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1. In its brief in response to petitioner's request for certiorari, the government agrees with petitioner that the decision of the court below, along with two other courts of appeals decisions, *Graham v. Commissioner*, 822 F.2d 844 (9th Cir. 1987) and *Miller v. Internal Revenue Service*, 829 F.2d 500 (4th Cir. 1987), *petition for cert. filed*, March 1, 1988 (No. 87-1449), "conflicts with the decision of the Eighth Circuit in *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987)," *petition for cert. filed*, February 19, 1988 (No. 87-1382). Br. Resp. at 6.

In addition, as in its own petition in *Staples*, the government observes that if the "conflicting holdings" among the courts of appeals in these related cases are permitted to stand "disparate tax treatment for similarly situated

taxpayers" will result. Br. Resp. at 7. The government also emphasizes the important conflicts in the decisions in the courts of appeals on the "validity of the legal proposition" at issue here and in particular, over the applicability to religious services of this Court's holding in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), which denied charitable contribution deductions for payments to purchase life insurance. *Id.* at 7. Accordingly, the government does "not oppose the petition" in this case with respect to "the statutory question presented" [1] *Id.* at 6. The government suggests, however, that there is "no reason" for this Court to review the constitutional issues presented (*Id.* at 9), and that it "would be preferable" for this Court to address the issues presented here in the Ninth Circuit case *Graham*

[1] Contrary to the impression that the government attempts to create in its brief (Br. Resp. 3-4), there is no issue in this case concerning the appropriateness of the behavior or operations of the churches and missions that received the payments at issue here. The parties stipulated that Scientology, the faith whose sacraments are at issue here is a religion (Pet. App. 32a, ¶ 52) and that the recipients of the contributions, the relevant Scientology missions and churches, were, at all relevant times, churches within the meaning of Internal Revenue Code § 170(b)(1)(A)(i) and tax-exempt religious organizations under § 501(c)(3) of the Code eligible to receive contributions deductible under § 170 (Pet. App. 32a, ¶ 53).

These stipulations mean that, as a § 501(c)(3) organization, each Scientology church that received the donations at issue here "engages primarily in activities which accomplish one or more of [the] exempt purposes specified in Section 501(c)(3), [and no] more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Treas. Reg. § 501(c)(3)-1(c)(1). The stipulations indicate that the exempt charitable purpose of Scientology is the "advancement of religion." Treas. Reg. 1.501(c)(3)-1(d)(2). Thus, the stipulations here contradict the government's recitation of factual findings of the Tax Court in a completely separate case that one church of this religion was not eligible for tax exemption in the years 1970-1972. *See Church of Scientology of California v. Commissioner*, 83 T.C. 382 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987); Br. Resp. at 4, n.5. The government's recitation regarding that case is, at best, irrelevant.

v. Commissioner, 822 F.2d 844 (9th Cir. 1987), rather than in this First Circuit case. (*Id.* at 8). Each of these contentions of the government will be addressed in turn.

2. A decision in favor of the government on the statutory issues involved in this case necessarily raises substantial constitutional questions under the first amendment. In *Staples*, the court, by reversing the Tax Court's decision and holding that the receipt of religious services cannot constitute the kind of "material, financial or economic benefit" receipt of which may make payments nondeductible under § 170, did not need to reach the constitutional question. In the decision below, however, as well as in *Miller* and in *Graham*, the courts, in holding that § 170 of the Internal Revenue Code required disallowance of the deductions at issue, also necessarily addressed the taxpayers' contentions that the Commissioner's application of § 170 of the Internal Revenue Code violates the religion clauses of the first amendment.

In now claiming that this Court should deny review of the constitutional issues raised by the decision below, the government ignores important constitutional claims raised by petitioner under both the establishment and the free exercise clauses of the first amendment. First, the government erroneously characterizes petitioner's constitutional claim as limited to the issue whether denial of the charitable deduction in this case involves an unconstitutional "denominational preference." In addition, in its effort to depict as unimportant the petitioner's contentions regarding the establishment of a constitutionally prohibited denominational preference, the government treats the very issue of statutory interpretation that is in controversy here as if it had already been decided in the government's favor.[2] Br. Resp. at 8-9. By so doing,

[2] An additional claim by the government that the constitutional issue is unimportant seems to be contained in its assertion that the treatment of the constitutional matters in the taxpayer's petition was "briefly argue[d]." Br. Resp. at 8, *citing* Pet. 25-27. The

the government itself demonstrates that the issues of statutory construction and constitutional interpretation in this case are inextricably intertwined and must both be considered for petitioner to be accorded a fair hearing on the substantive merits of his case.

In claiming that its proposed application of section 170 of the Internal Revenue Code is neutral across all religious denominations, the government simply asserts that the payments made by the petitioner here solely to participate in the core religious sacraments of his church do not fall within the Revenue Rulings that allow—without any question as to the nature or value of the religious services involved—deductions under section 170 for "pew rents, assessments, church dues *and the like*." Br. Resp. at 9, *citing* A.R.M. 2, 1 C.B. 150 (1919), *reprinted in* Pet. App. 57a (*updated and reaffirmed* in Revenue Ruling 70-47, 1970-1 C.B. 49) (emphasis added). The applicability of that Revenue Ruling and its underlying policy of distinguishing religious from secular services under § 170, of course, is the very issue in this case. *See* Pet. at 10-24. The Eighth Circuit in *Staples*, 821 F.2d at 1327, explicitly analogized the payments at issue here to the "passing of the collection plate in church," and found no important difference between the payments in this case and those payments for participation in religious services addressed in the prior Revenue Rulings. 821 F.2d at 1326-28. The contention in the government's brief that there

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government's point here seems rather silly, but in making it, the government overlooks entirely taxpayer's arguments (Pet. at 21-24) that application of the legal standard established by this Court in a case involving payments for insurance policies, *United States v. American Bar Endowment*, 477 U.S. 105, to the religious services at issue here would violate first amendment prohibitions on entanglement of church and state by requiring IRS valuation of religious services. Moreover, if, as the government seems to suggest, page counting is a method of assessing an issue's importance, it is worth noting that two-thirds of the opinion below (Pet. App. 9a-28a) was devoted to analysis of the constitutional issues.

is no substantial constitutional issue in this case, therefore, is based entirely on its assumption of the validity of its interpretation of the very statutory question that is at issue here.

The peculiar interpretation advanced in the government's Brief in Response that the Commissioner's rulings regarding analogous payments to other churches and synagogues have no application to this case was explicitly rejected not only by the Eighth Circuit but also by the court below and the other two appellate courts that have agreed that the payments at issue here are not deductible. *See Hernandez v. Commissioner*, 819 F.2d 1212, 1227, Pet. App. at 27a ("[W]e have some doubt as to the continuing validity of the presumption in Rev. Rul. 70-47, 170-1 C.B. 39 [sic], that pew rents and mandatory church dues are tax deductible gifts. . . ."); *Graham v. Commissioner*, 822 F.2d 844, 850 (9th Cir. 1987) ("We are not convinced that . . . those rulings would comport with the analysis of section 170 that we have set forth here."); *Miller v. Internal Revenue Service*, 829 F.2d 500, 505 (4th Cir. 1987) ("We have no reason to believe that the IRS will fail to apply the principles that *emerge from this litigation* in its treatment of other religious groups.") (emphasis added.) Indeed, the series of suggestions advanced by the government both in its Brief in Response here and in its briefs below that all other payments to participate in religious services by adherents of all other religious faiths would remain deductible under § 170 make clear that the government is urging an application of § 170 by which it intends to deny charitable deductions for participation in religious services only by members of the Scientology faith. Such a policy creates an unconstitutional denominational preference under the establishment clause of the first amendment. *See Larson v. Valente*, 456 U.S. 228, 244 (1982).

In addition to the constitutional issue raised by the denominational preference that would be created by the

government's interpretation of § 170, other important first amendment issues that merit review by this Court are raised by the interpretation of § 170 adopted by the court below. As the government's Brief in Response indicates, the court below applied to payments solely for religious services, the legal standard adopted by this court in *United States v. American Bar Endowment*, 477 U.S. 105, a case denying charitable deductions for taxpayers' payments to purchase insurance: "The taxpayer, therefore, must at a minimum demonstrate that he contributed money or property *in excess of the value of any benefit he received in return.*" 477 U.S. at 118, *quoted in* Br. Resp. at 5 (emphasis added). Where a payment is made and, in return, religious services are received, important first amendment issues are raised that simply are not at stake when this legal standard is applied—as it always has been prior to this litigation—only to secular services such as insurance. Therefore, the fundamental issue of statutory interpretation at issue here—whether to apply the legal standard announced in the *American Bar Endowment* case to payments in exchange solely for participation in religious sacraments—cannot be separated from the special treatment of religion under the first amendment. Even the court below recognized that important "constitutional difficulties" may arise where the valuation of religious sacraments is at issue. *Hernandez v. Commissioner*, 819 F.2d at 1218. The Eighth Circuit in *Staples* remarked upon the "incongruity of attempting to place a market value on religious participation" and concluded that "[s]piritual gain to an individual church member cannot be valued by any measure known in the secular realm." 821 F.2d at 1327.

Indeed, special concern for entanglement with churches seems to account for the sharp distinction in IRS policy, heretofore consistently followed, between allowing without question deductions for membership dues to churches and synagogues and reducing deductions for membership dues to secular organizations by the value of secular

benefits made available to members. *Compare* Rev. Rul. 70-47, 1970-1 C.B. 49 (*reaffirming* A.R.M. 2, 1 C.B. 150 (1919)) (allowing deduction for all membership dues paid to churches and synagogues without inquiring into the value of such church memberships) *with* Rev. Rul. 68-432, 1968-1 C.B. 104 (detailing various instances where membership dues to secular charities are deductible only in part because the deduction is reduced by the value of secular benefits made available to members). Congress' special consideration of religion and churches throughout the Internal Revenue Code is a response to first amendment concerns. *See, e.g.*, 26 U.S.C. § 7611 (relating to restrictions on church tax inquiries and examinations); § 6033(a)(2)(A)(i) (exemption for churches from annual information return filing requirements).

As the taxpayer's Petition in this case details, at least two of the three methods offered by the court below for valuing the religious services which are at issue here violate the establishment clause of the first amendment. Pet. at 22-24.[3] The very notion of comparing relative values of religious services or determining allowable charitable deductions based on the costs to a church of providing religious sacraments is repugnant to the first amendment's prohibitions on entanglement of church and state both because it requires the valuation of religious services and creates denominational preferences. *See Walz v. Tax Commissioner*, 397 U.S. 664, 674 (1970); *Larson v. Valente*, 456 U.S. 228, 234 (1982).

In addition, the courts that have affirmed the Tax Court's decision, including the court below, have misapplied this Court's holdings regarding the protections of the first amendment in *Bob Jones University v. United States*, 461 U.S. 574, 603-04 (1983) and in *United States v. Lee*, 455 U.S. 252 (1982). The Tax Court found

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[3] The third method is contrary to IRS rulings and case law interpreting § 170. *See* Pet. at 23.

that the method used by the Church of Scientology of raising funds from its members was its method of implementing a sincerely held religious belief, the Doctrine of Exchange. Pet. App. 33a-34a. *See also* Pet. at 8 n. 4. The affirming courts of appeals have failed to recognize that the disallowance of a tax deduction for payments solely to participate in religious sacraments imposes a burden on taxpayers' religious practices by subjecting them to income tax, which burden requires the government to demonstrate both that a compelling state interest exists for its actions and that no less restrictive alternative is available. *Bob Jones University v. United States*, 461 U.S. at 603-04.

Moreover, the three affirming courts of appeals have accepted without question the IRS' claim that a compelling state interest exists here in the need to maintain a sound and uniform tax system. Although the *Lee* case, 455 U.S. 252, establishes that the need for a sound and uniform tax system can satisfy the government's burden of showing a compelling state interest, that case does not give the government a license simply to assert that any interpretation of the tax law automatically satisfies its constitutional burden. Indeed, the interpretation of § 170 being advanced by the government in this case represents a move from uniform tax administration among religions to an unpredictable, discretionary and non-uniform tax system. The IRS practice—consistently followed from the publication of A.R.M. 2, 1 C.B. 150, in 1919 until the inception of this litigation—of allowing charitable deductions for payments for religious services, regardless of their *form* or *nature* or *value*, has provided sound tax administration for seven decades. There is no compelling state interest for the rule being advanced by the government here.

3. In its brief in the instant case, the government indicates that "if possible," it "would be preferable for

this Court to consider the question presented here" in the *Graham* case, and has indicated that it does "not intend to oppose" the taxpayer's petition in that case. Br. Resp. at 8. The government asserts that in *Graham*, "a concrete factual context" exists. *Id.* The basis for the government's preference for the *Graham* case is mysterious. Since the entirety of the record in *Graham* was stipulated to be part of the record in the instant case, as well as to be included in the record in the *Staples*, and *Miller* cases, there is nothing in the *Graham* record that was not before the courts of appeals in these other cases and nothing that would not be before this Court if it grants review in any of these cases. Moreover, a case and controversy is equally present between the taxpayers and the government in each of these cases and each case raises identical legal issues.

There are a variety of alternatives that the Court might pursue in reviewing one or more of these related cases. For example, the Court could grant review in each of the related cases and consolidate them for argument; since counsel in this case represents all the taxpayers in each of these cases, such consolidation would not require any additional time for argument or briefing by the taxpayers or the government. Alternatively, the Court may wish to grant the taxpayer's petitions in this case, the first case before the Court, and hold the petition in the related cases pending its disposition. With three petitions having been filed, both by taxpayers and by the government, there seems little reason to delay resolution of these important issues in the present case while awaiting the filing of a fourth petition based upon the identical Tax Court record.

CONCLUSION

The pending petition for a writ of certiorari in this case should be disposed of as appropriate in light of the pending petitions of certiorari in *Commissioner v. Staples*, No. 87-1382 and in *Miller v. Commissioner*, No. 87-1449.

Respectfully submitted,

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March, 1988

(5) (4)

Nos. 87-963, 87-1616

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

KATHERINE JEAN GRAHAM, RICHARD M. HERMANN AND DAVID FORBES MAYNARD,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

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JOINT APPENDIX

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PETITION FOR CERTIORARI IN 87-963 FILED DEC. 11, 1987
CERTIORARI GRANTED IN 87-963 APRIL 18, 1988

PETITION FOR CERTIORARI IN 87-1616 FILED MARCH 30, 1988
CERTIORARI GRANTED IN 87-1616 MAY 23, 1988

CONSOLIDATION ORDERED MAY 23, 1988

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Order and Decision of the Tax Court, *Maynard*, entered Oct. 19, 1984 ..... Pet. App. 35a

Opinion of the Tax Court ..... Pet. App. 36a

Opinion of the Court of Appeals, filed July 17, 1987 ..... Pet. App. 1a

Judgment of the Court of Appeals, filed July 17, 1987 ..... Pet. App. 19a

Hernandez, No. 87-963

Order and Decision of the Tax Court entered March 6, 1986 ..... Pet. App. 43a

Opinion of the Court of Appeals, filed June 1, 1987 ..... Pet. App. 1a

Decree of the Court of Appeals, filed June 1, 1987 ..... Pet. App. 29a

UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
June 25, 1976	PETITION FILED: FEE PAID
Aug. 20, 1976	ANSWER by Resp. filed. (c/s 8/18/76)
Nov. 18, 1982	AMENDED PETITION filed.
Nov. 30, 1982	ANSWER TO AMENDED PETITION by Resp (C/S 11/26/82)
Dec. 6, 7, 8, 1982	TRIAL at Los Angeles, CA before Judge Sterrett.
	Joint Oral Motion to consolidate—See Order
	Joint Oral stipulation that entire record at 3352-78 be made part of the record in this case—See Order.
	12/6/82 Stipulation of Facts with exhibits filed.
Dec 6, 1982	ORDER, that the joint oral motion is granted and 5837-76, 9384-79 and 374-80 are consolidated for trial, briefing and opinion. Further
	ORDER, that the entire record at 3352-78 is made part of the record in this case.

Date	Filings and Proceedings
Oct 15, 1984	OPINION filed, Judge Sterrett. (Decision will be entered for Resp)
Oct 19, 1984	DECISION ENTERED, Judge Sterrett.
Nov 19, 1984	NOTICE OF APPEAL to U.S.C.A., 9th Cir., filed by Petr.

UNITED STATES TAX COURT

Docket No. 9384-79

RICHARD M. HERMANN,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
Jul. 3, 1979	PETITION FILED: FEE PAID
Mar 26, 1982	ORDER, that Resp's. motion is granted and the caption of this case is amended by deleting the Letter "S" from the docket number. Further
	ORDER, that the assegations [sic] of error and facts relating to the petition are deemed denied.
Nov 18, 1982	AMENDED PETITION filed.
Nov 30, 1982	ANSWER TO AMENDED PETITION by Resp (C/S 11/26/82)
Dec 6, 7, 8, 1982	TRIAL at Los Angeles, CA before Judge Sterrett.
	Joint Oral Motion to consolidate—See Order
	Joint Oral stipulation that entire record at 3352-78 be made part of the record in this case.—See Order 12/6/82 Stipulation of Facts with exhibits filed.

Date	Filings and Proceedings
Dec 6, 1982	ORDER, that the joint oral motion is granted and 5837-76 9384-79 and 374-80 are consolidated for trial, briefing and opinion. Further
	ORDER, that the entire record at 3352-78 is made part of the record in this case.
Oct 15, 1984	OPINION filed, Judge Sterrett. (Decision will be entered for Resp)
Oct 19, 1984	DECISION ENTERED, Judge Sterrett.
Nov 19, 1984	NOTICE OF APPEAL to U.S.C.A., 9th Cir., filed by Petr.

UNITED STATES TAX COURT

Docket No. 374-80

DAVID FORBES MAYNARD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
Jan 8, 1980	PETITION FILED: FEE PAID Jan 8, 1980
Mar 26, 1982	ORDER, that Resp's. motion is granted and the caption of this case is amended by deleting the Letter "S" from the docket number. Further
	ORDER, that the allegations of error and facts relating to the petition are deemed denied.
Nov 18, 1982	AMENDED PETITION filed.
Nov 30, 1982	ANSWER TO AMENDED PETITION by Resp (C/S 11/26/82)
Dec 6, 7, 8, 1982	TRIAL at Los Angeles, CA before Judge Sterrett.
	Joint Order Motion to consolidate—See Order
	Joint Oral Stipulation that entire record at 3352-78 be made part of the record in

Date	Filings and Proceedings
	this case—See Order. 12/6/82 Stipulation of Facts with exhibits filed.
Dec 6, 1982	ORDER, that the joint oral motion is granted and 5837-76, 9384-79 and 374-80 are consolidated for trial, briefing and opinion. Further
	ORDER, that the entire record at 3352-78 is made part of the record in this case.
Oct 15, 1984	OPINION filed, Judge Sterrett. (Decision will be entered for Resp.)
Oct 19, 1984	DECISION ENTERED, Judge Sterrett.
Nov 19, 1984	NOTICE OF APPEAL to U.S.C.A., 9th Cir., filed by Petr.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Consolidated 84-7794, 84-7798 & 84-7799

KATHERINE JEAN GRAHAM,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
Nov. 23, 1984	DOCKETED CAUSE AND ENTERED APPEARANCE OF COUNSEL.
Jan. 24, 1985	Filed order (C/A) (1) These appeals (84-7794 & 84-7798 & 84-7799) are consolidated.
Dec. 10, 1985	ARGUED & SUBMITTED BEFORE: WRIGHT, KENNEDY, BEEZER, CJJ.
July 17, 1986	ORDERED OPINION FILED (KENNEDY) AND JUDGMENT TO BE FILED AND ENTERED.
July 17, 1986	FILED OPINION—AFFIRMED.
July 17, 1986	FILED AND ENTERED JUDGMENT
Aug 10, 1986	Filed & 42 Joint Appellants' Petition for Rehearing & Suggestion of Rehearing En Banc. (Panel, all active judges) (15 pps) 8/7/87

Date	Filings and Proceedings
Sept 16, 1986	Filed order (WRIGHT, KENNEDY & BEEZER) Appellee is requested to file a response to aplt's petition for rehearing on or before 9/29/87. 9/16 ch
Sept 29, 1986	Filed Orig. & 33 copies of aple's response to the petition for rehearing with suggestion for rehearing en banc. (15 pgs) 9/28 (PANEL & ALL ACTIVE JUDTS) cal
Dec 1, 1986	Filed order (WRIGHT, KENNEDY, BEEZER) The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected. ch.
Jan 13, 1987	MANDATE ISSUED—COSTS TAXED.

UNITED STATES TAX COURT

Docket No. 13620-84

ROBERT L. HERNANDEZ,
Petitioner.

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
May 14, 1984	PETITION FILED: FEE PAID May 17, 1984
July 2, 1984	ANSWER by Resp. (C/S 6/29/84)
Jul 3, 1984	STIPULATION that case be bound by test cases dkt. Nos. 5837-76, 9384-79 and 374-80.
Mar. 6, 1986	ORDER that Petr's. Motion for Entry of Final Decision is granted. Further DECISION ENTERED, Judge Sterrett.
Mar 17, 1986	NOTICE OF APPEAL to U.S.C.A. First Circuit, filed petitioner. Mar 20, 1986

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 86-1276

ROBERT L. HERNANDEZ,
Petitioner, Appellant,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent, Appellee.

RELEVANT DOCKET ENTRIES

Date	Filings and Proceedings
March 25, 1986	Copy of notice of appeal and docket entries received and filed. Cases docketed. Notices mailed. (lb)
Jan. 6, 1987	Heard before JJ. Coffin, Selya and Gignoux. (sb)
June 1, 1987	DECREE: The judgment of the tax court is affirmed. Opinion of the court by Coffin, J. Notices mailed. (jd)
June 22, 1987	Appellant's petition for rehearing and suggestion of rehearing en banc, received and filed. (nal)
July 15, 1987	Order (Campbell, Ch. J., Coffin, Bownes, Breyer, Tortfuella, Belya and Gignoux, JJ.) denying the petition for rehearing and the suggestion for rehearing en banc Notices mailed. (lb)
July 23, 1987	Taxation of costs filed. Mandate issued, copy filed. Original papers to follow, Notices mailed (jd)

UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED PETITION

Petitioner, leave of Court having first been obtained, hereby amends her petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated April 7, 1976, and alleges as follows:

1. Petitioner is an individual with legal residence now at 1404 North Catalina Street, Los Angeles, California. Petitioner's social security number is 191-34-5323. The return for the period here involved was filed with the Hawaii District Office of the Internal Revenue Service or with the Internal Revenue Service Center serving the Hawaii District Office at the time the return was filed.

2. The notice of deficiency was mailed to petitioner on April 7, 1976, and was issued by the District Office of the Internal Revenue Service in Honolulu, Hawaii. A true and correct copy of said notice, including the statement and schedules accompanying the notice, is attached to this petition and marked Exhibit A.

3. The deficiencies as determined by the Commissioner are in income tax for the calendar year 1972, in the amount of $316.24. The entire amount of $316.24 is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously disallowed contributions of $1,682.00 (referred to in paragraph (a) of Statement Schedule 2 attached to the notice of deficiency) as charitable contributions deductible under I.R.C. § 170.

(b) The Commissioner erroneously determined that the organizations to which the contributions were made (referred to as the "Church of Scientology" in paragraph (a) of Statement Schedule 2 attached to the notice of deficiency) were not churches within the meaning of I.R.C. § 170(b), were not corporations described in I.R.C. § 170(c)(2) and were not organizations described in I.R.C. § 501(c)(3).

(c) The Commissioner erroneously determined that the contributions were not gifts or contributions within the meaning of I.R.C. § 170(c).

(d) The Commissioner erroneously based his determination that the contributions were not gifts or contributions upon a definition which results in disparate treatment of petitioner as compared to members of religions other than Scientology, in violation of the religion clauses of the first amendment.

(e) I.R.C. § 170 is unconstitutionally vague because it lacks sufficient guidelines and standards to prevent arbitrary applications in areas abutting the exercise of first amendment rights.

(f) The denial of the deduction was without any valid secular purpose and proceeded from an invidious, class-based policy of discrimination against petitioner, her religion, the Church and the Mission in violation of the first amendment and the due process clause of the fifth amendment.

(g) The construction and application of § I.R.C. so as to disqualify petitioner's contributions for deduction deny her, the Church and the Mission the equal protection of the laws.

(h) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction have the primary effect of disfavoring petitioner's religion and establishing a preference for other denominations in violation of the inter-sectarian neutrality requirement of the first amendment.

(i) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction result in excessive government entanglement with religion in violation of the first amendment.

(j) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction impair free exercise and associational rights guaranteed petitioner and her religion by the first amendment.

5. The facts upon which petitioner relies in this case are as follows:

(a) Scientology is and at all relevant times was a religion within the purview of the first amendment.

(b) Petitioner is and at all relevant times was a Scientologist.

(c) Petitioner made the contributions disallowed by the Commissioner to the Church of Scientology of Hawaii (hereinafter called "the Church") and to the Dianetics and Scientology Center of Hawaii (hereinafter called "the Mission").

(d) At all relevant times, the Church was a church within the meaning of I.R.C. § 170(b)(1)(A)(i), was a corporation described in I.R.C. § 170(c)(2) and was an organization described in I.R.C. § 501(c)(3).

(e) At all relevant times, the Mission was a church within the meaning of I.R.C. § 170(b)(1)(A)(i), was a corporation described in I.R.C. § 170(c)(2)

and was an organization described in I.R.C.§ 501 (c) (3).

(f) Petitioner neither received nor expected to receive anything with respect to her contributions other than her and her children's participation in religious services ministered by the Church and Mission.

(g) It is a religious doctrine of Scientology that the benefits resulting from the participation of any individual in such religious services benefits the religion of Scientology and all Mankind.

(h) Petitioner's contributions to the Church and Mission were made in accordance with ecclesiastical policies as to how they shall obtain funds for their support, and in accordance with religious doctrines of Scientology.

(i) No part of the funds received by the Church and Mission from petitioner was required to be or was set aside or earmarked for the benefit of petitioner or for any other purpose other than the religious purposes of the Church and Mission.

(j) The deductibility of payments as charitable contributions is an important factor in the ability of an exempt organization to raise funds for its support.

(k) Denial of the charitable contribution deduction for the contributions made by petitioner and similarly situated Scientologists would adversely and substantially affect the ability of petitioner and other Scientologists to support their churches and would adversely and substantially affect the ability of Churches and Missions of Scientology to obtain funds for their support.

(l) Members of sects and denominations including Scientology pay money to their churches, and participate in the religious services ministered by their churches.

(m) The Commissioner allows deductions under I.R.C. § 170 for such payments by such members, with the exception of Scientologists.

(n) The Commissioner's disapproval of the Scientology religion was a substantial factor in his decision to disallow the deduction to petitioner for her contributions to the Church and Mission.

(o) The Commissioner's disallowance of the deduction for petitioner's contributions resulted from an evaluation of the religious services, practices and beliefs of the Church, the Mission, and their members, including petitioner.

(p) The Commissioner's disallowance of the deduction for petitioner's contributions results in further evaluation of the religious services, practices and beliefs of the Church, the Mission, and their members, including petitioner.

WHEREFORE, the petitioner prays that this Court may hear the case and determine that there is no deficiency due from petitioner for the calendar year 1972.

Dated: September —, 1982

CHRISTOPHER COBB
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1306 North Berendo Street
c/o GLA
Los Angeles, California
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UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER TO AMENDED PETITION

1., 2. and 3. Admits.

4. Denies.

5. (a) Admits.

5. (b) through 5. (p), inclusive. Denies.

6. Denies each and every allegation of the amended petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respect approved.

KENNETH W. GIDEON
Chief Counsel
Internal Revenue Service

By: /s/ Paul G. Wilson
PAUL G. WILSON
Assistant District Counsel

Date: 26 Nov. 1982

Of Counsel:

EMORY L. LANGDON
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(Certificate of Service Omitted in Printing)

UNITED STATES TAX COURT

Docket No. 9384-79

RICHARD M. HERMANN,
Petitioner
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED PETITION

Petitioner, leave of Court having first been obtained, hereby amends his petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated April 4, 1979, and alleges as follows:

1. Petitioner is an individual with legal residence now at 2339 Prosser Avenue, Los Angeles, California. Petitioner's social security number is 556-84-3322. The return for the period here involved was filed with the Internal Revenue Service Center in Fresno, California.

2. The notice of deficiency was mailed to petitioner on April 4, 1979, and was issued by the District Office of the Internal Revenue Service at Los Angeles, California. A true and correct copy of said notice, including the statement and schedules accompanying the notice, is attached to this petition and marked Exhibit A.

3. The deficiencies as determined by the Commissioner are in income tax for the calendar year 1979, in the amount of $803.00. Virtually the entire amount of $803.00 is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously disallowed contributions of $3,922.00 (referred to in paragraph (b) of Statement Schedule 2 attached to the notice of deficiency as charitable contributions deductible under I.R.C. § 170.

(b) The Commissioner erroneously determined that the organization to which the contributions were made, the Church of Scientology of California, was not a church within the meaning of I.R.C. § 170(b), was not a corporation described in I.R.C. § 170 (c)(2) and was not an organization described in I.R.C. § 501(c)(3).

(c) The Commissioner erroneously determined that the contributions were not gifts or contributions within the meaning of I.R.C. § 170(c).

(d) I.R.C. § 170 is unconstitutionally vague because it lacks sufficient guidelines and standards to prevent arbitrary applications in areas abutting the exercise of first amendment rights.

(e) The denial of the deduction was without any legitimate secular purpose and proceeded from an invidious, class-based policy of discrimination against petitioner, his Church, and his religion, in violation of the first amendment and the due process clause of the fifth amendment.

(f) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction deny him, his Church, and his religion the equal protection of the laws.

(g) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction have the primary effect of disfavoring petitioner, his Church, and his religion and establishing a preference for other denominations and their members and Churches in violation of the inter-sectarian neutrality requirement of the first amendment.

(h) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction result in excessive government entanglement with religion in violation of the first amendment.

(i) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction impair free exercises and associated rights guaranteed petitioner, his Church, and his religion by the first amendment.

5. The facts upon which petitioner relies in this case are as follows:

(a) Scientology is and at all relevant times was a religion within the purview of the first amendment.

(b) Petitioner is and at all relevant times was a Scientologist.

(c) Petitioner made the contributions disallowed by the Commissioner to the Church of Scientology of California (hereinafter called "the Church").

(d) At all relevant times, the Church was a church within the meaning of I.R.C. § 170(b)(1)(A)(i), was a corporation described in I.R.C. § 170(c)(2) and was an organization described in I.R.C. § 501 (c)(3).

(e) Petitioner neither received nor expected to receive anything with respect to his contributions other than his participation in religious services ministered by the Church.

(f) It is a religious doctrine of Scientology that the benefits resulting from the participation of any individual in such religious services benefits the religion of Scientology and all Mankind.

(g) Petitioner's contributions to the Church were made in accordance with ecclesiastical policies as to how it shall obtain funds for its support, and in accordance with religious doctrines of Scientology.

(h) No part of the funds received by the Church from petitioner was required to be or was set aside or earmarked for the benefit of petitioner or for any other purpose other than the religious purposes of the Church.

(i) The deductibility of payments as charitable contributions is an important factor in the ability of an exempt organization to raise funds for its support.

(j) Denial of the charitable contribution deduction for the contributions made by petitioner and similarly situated Scientologists would adversely and substantially affect the ability of petitioner and other Scientologists to support their churches and would adversely and substantially affect the ability of Churches and Missions of Scientology to obtain funds for their support.

(k) Members of sects and denominations, including Scientologists, pay money to their churches without receiving or expecting to receive any benefit or return that the benefit of religious services ministered by their churches.

(l) The Commissioner allows deductions under I.R.C. § 170 for such payments by such members, with the exception of Scientologists.

(m) The Commissioner's disapproval of the Scientology religion was a substantial factor in his decision to disallow the deduction to petitioner for his contributions to the Church.

(n) The Commissioner's disallowance of the deduction for petitioner's contributions resulted from an evaluation of the religious services, practices and beliefs of the Church and its members, including petitioner.

(o) The Commissioner's disallowance of the deduction for petitioner's contributions results in further evaluation of the religious services, practices and beliefs of the Church and its members, including petitioner.

WHEREFORE, the petitioner prays that this Court may hear the case and determine that there is no deficiency due from petitioner for the calendar year 1975.

Dated: November 16, 1982

/s/ C. Cobb
CHRISTOPHER COBB
Counsel for Petitioner
c/o GLA
1306 North Berendo Street
Los Angeles, California 90027
Tel. (213) 660-5348

UNITED STATES TAX COURT

RICHARD M. HERMAN,
Docket No. 9384-79
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER TO AMENDED PETITION

1., 2. and 3. Admits.

4. Denies.

5.(a) Admits.

5.(b) through 5.(o), inclusive. Denies.

6. Denies each and every allegation of the amended petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

KENNETH W. GIDEON
Chief Counsel
Internal Revenue Service

By: /s/ Paul G. Wilson
PAUL G. WILSON
Assistant District Counsel

Date: 26 Nov. 1982

OF COUNSEL:

EMORY L. LANGDON
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(Certificate of Service Omitted in Printing)

UNITED STATES TAX COURT

Docket No. 374-80
DAVID FORBES MAYNARD,
Petitioner
v.
COMMISSIONER OF INTERNAL REVENUE
Respondent.

AMENDED PETITION

Petitioner, leave of Court having first been obtained, hereby amends his petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated November 14, 1979, and alleges as follows:

1. Petitioner is an individual with legal residence now at 3461 Anderson Street, Riverside, California. Petitioner's social security number is 554-82-5908. The return for the period here involved was filed with the Internal Revenue Service Center in Fresno, California.

2. The notice of deficiency was mailed to petitioners on November 14, 1979, and was issued by the District Office of the Internal Revenue Service Center in Fresno, California. A true and correct copy of said notice, including the statement and schedules accompanying the notice, is attached to this petition and marked Exhibit A.

3. The deficiencies as determined by the Commissioner are in income tax for the calendar year 1977, in the amount of $643.00. The entire amount of $643.00 is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously disallowed contributions in the amount of approximately $5,000.00 as charitable contributions deductible under I.R.C. § 170.

(b) The Commissioner erroneously determined that the Church of Scientology, Mission of Riverside ["the Church" herinafter], was not a church within the meaning of I.R.C. § 170 (b), was not a corporation described in I.R.C. § 170(c) (2) and was not an organization described in I.R.C. § 501(c) (3).

(c) The Commissioner erroneously determined that the contributions were not gifts or contributions within the meaning of I.R.C. § 170(c).

(d) I.R.C. § 170 is unconstitutionally vague because it lacks sufficient guidelines and standards to prevent arbitrary applications in areas abutting the exercise of first amendment rights.

(e) The denial of the deduction was without any legitimate secular purpose and proceeded from an invidious, class-based policy of discrimination against petitioner, his Church, and his religion, in violation of the first amendment and the due process clause of the fifth amendment.

(f) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction deny him, his Church, and his religion the equal protection of the laws.

(g) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction have the primary effect of disfavoring petitioner, his Church, and his religion and establishing a preference for other denominations and their members and Churches in violation of the inter-sectarian neutrality requirement of the first amendment.

(h) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction result in excessive government entanglement with religion in violation of the first amendment.

(i) The construction and application of I.R.C. § 170 so as to disqualify petitioner's contributions for deduction impair free exercise and associational rights guaranteed petitioner, his Church, and his religion by the first amendment.

5. The facts upon which petitioner relies in this case are as follows:

(a) Scientology is and all relevant times was religion within the purview of the first amendment.

(b) Petitioner is and at all relevant times was a Scientologist.

(c) Petitioner made the contributions disallowed by the Commissioner to the Church of Scientology, Mission of Riverside.

(d) At all relevant times, the Church was a church within the meaning of I.R.C. § 170(b) (1) (A) (i), was a corporation described in I.R.C. § 170(c) (2) and was an organization described in I.R.C. § 501 (c) (3).

(e) Petitioner neither received nor expected to receive anything with respect to his contributions other than participation in religious services ministered by the Church.

(f) It is a religious doctrine of Scientology that the benefits resulting from the participation of any individual in such religious services benefits the religion of Scientology and all Mankind.

(g) Petitioner's contributions to the Church were made in accordance with ecclesiastical policies as to how it shall obtain funds for its support, and in accordance with religious doctrines of Scientology.

(h) No part of the funds received by the Church from petitioner was required to be or was set aside or earmarked for the benefit of petitioner or for any other purpose other than the religious purposes of the Church.

(i) The deductibility of payments as charitable contributions is an important factor in the ability of an exempt organization to raise funds for its support.

(j) Denial of the charitable contribution deduction for the contributions made by petitioner and similarly situated Scientologists would adversely and substantially affect the ability of petitioner and other Scientologists to support their churches and would adversely and substantially affect the ability of Churches and Missions of Scientology to obtain funds for their support.

(k) Members of sects and denominations, including Scientologists, pay money to their churches without receiving or expecting to receive any benefit or return other than the benefit of religious services ministered by their churches.

(l) The Commissioner allows deductions under I.R.C. § 170 for such payments by such members, with the exception of Scientologists.

(m) The Commissioner's disapproval of the Scientology religion was a substantial factor in his decision to disallow the deduction to petitioner for his contributions to the Church.

(n) The Commissioner's disallowance of the deduction for petitioner's contributions resulted from an evaluation of the religious services, practices and beliefs of the Church and its members, including petitioner.

(o) The Commissioner's disallowance of the deduction for petitioner's contributions results in further

evaluation of the religious services, practices and beliefs of the Church and its members, including petitioner.

WHEREFORE, the petitioner prays that this Court may hear the case and determine that there is no deficiency due from petitioner for the calendar year 1977.

Dated: November 16, 1982

/s/ C. Cobb
CHRISTOPHER COBB
Counsel for Petitioner
c/o GLA
1306 North Berendo Street
Los Angeles, California 90027
Tel. (213) 660-5348

UNITED STATES TAX COURT

Docket No. 374-80

DAVID FORBES MAYNARD,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

1., 2. and 3. Admits

4. Denies.

5.(a) Admits.

5.(b) through 5.(o), inclusive. Denies.

6. Denies each and every allegation of the amended petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

KENNETH W. GIDEON
Chief Counsel
Internal Revenue Service

By: /s/ Paul G. Wilson
PAUL G. WILSON
Assistant District Counsel

Of Counsel:
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Date: 26 Nov. 1982

(Certificate of Service Omitted in Printing)

UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

[Filed Dec. 6, 1982]

STIPULATION #1

In accordance with Tax Court Rule 91, the parties hereby stipulate the matters hereinafter stated, subject to the rights of the parties to introduce other and further evidence not inconsistent herewith and reserving to each of the parties the right to object to the materiality or relevance hereof in whole or in part.

1. Petitioner maintained her legal residence at 743 Pumehana, Hawaii, at the time of the filing of the petition herein.

2. Petitioner filed a timely Federal Income Tax return for the taxable year ending December 31, 1972, a true and correct copy of which is attached hereto and marked as Joint Exhibit 1-A.

3. Petitioner's income tax return for said taxable year was examined by respondent, who, on April 7, 1976, issued a notice of deficiency, a true and correct copy of which is attached hereto and marked as Joint Exhibit 2-B.

4. Petitioner claimed a charitable contribution deduction under I.R.C. § 170 for $2,379.50 transferred to the Church of Scientology of Hawaii and to the Scientology and Dianetic Center of Hawaii.

5. Each of Exhibits C through Q is a document received by petitioner from the Church of Scientology of Hawaii or from the Scientology and Dianetics Center of Hawaii, reflecting transactions of petitioner with one or the other of them.

6. During November of 1972, petitioner paid $200.00 to the Church of Scientology of Hawaii for Auditing, which payment is not reflected on respondent's Exhibits C through Q.

7. The neologisms "Scientology" and "Dianetics" were introduced by L. Ron Hubbard. Mr. Hubbard wrote *Dianetics: The Modern Science of Mental Health*, which was published in 1950 and which sets forth the general principles of Dianetics and Dianetic Auditing as discovered and developed to 1950.

8. Some of the beliefs and practices of Scientology are roughly described in lay terms in *Scientology, A World Religion Emerges in the Space Age*, a book copyrighted by L. Ron Hubbard. Respondent's Exhibit R attached hereto is a true copy of said book. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

9. The Church of Scientology of Hawaii is, and is considered by the Churches of Scientology to be, a church of the kind referred to by Scientologists as a "Class IV Church" or "Class IV Org." The Scientology and Dianetics Center of Hawaii is, and is considered by Churches of Scientology to be, a church of the kind referred to by Scientologists as a "Mission."

10. There are many churches and missions in the United States and in other countries which practice, teach and promulgate Scientology. As used herein, "Churches of Scientology" refers collectively to such

churches and missions, and "Scientologist" refers to members of such churches and missions.

11. The Churches of Scientology, including the Church of Scientology of Hawaii and the Scientology and Dianetics Center of Hawaii, follow common doctrines, practices and beliefs of Scientology.

12. The Churches of Scientology offer Auditing and courses to Scientologists.

13. Auditing, also variously referred to as "processing," "counseling" and "pastorial counselling," is conducted by a specially trained Scientologist, referred to as an "Auditor."

14. Auditing is generally conducted in a private session one to one, between the Auditor and the person being Audited.

15. Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology.

16. Scientologists are taught that the individual is an immortal spirit who has a mind and a body. Scientologists are also taught that the highest level of spiritual ability and awareness can be attained only by progressing on a step by step basis through lower and intermediate levels of Auditing.

17. The structure, ritual and content of each Auditing session are determined by the level of attainment of the Scientologist being Audited.

18. Some of the rituals used in Auditing include questions, commands and drills.

19. The Auditor acknowledges the response of the person being Audited, but offers no analysis of the response to the person being Audited.

20. An E-Meter is a device used in Auditing.

21. Auditing is delivered in sessions. An "Intensive" is a specific number of hours of Auditing intended to be

given over a short period of time. An intensive is 12½ or 25 hours of Auditing and usually involves 12½ hours of Auditing.

22. An Auditor who conducts a session is expected to know and understand the rituals, codes, tenets and doctrines of Scientology applicable to the conduct of Auditing generally and to have mastered the particular material to be used in the session.

23. No subject matter is taught, studied or learned during an Auditing session (except that the Scientologist being Audited necessarily learns and understands the particular practice used in the session).

24. The Churches of Scientology offer courses to provide training in the doctrines, tenets, codes, policies and practices of Scientology and to train Scientologists as Auditors.

25. Training is delivered to Scientologists under the supervision of a trained Scientologist. Training is delivered in courses each of which includes specific material to be mastered by the students in order to complete the course. Courses range from basic courses which introduce the doctrines and tenets of Scientology through courses which train and qualify Auditors to deliver Auditing at the highest levels.

26. It is a doctrine of Scientology, and Scientologists are taught, that spiritual gains result from the study and understanding of the doctrines, codes and tenets of Scientology, whether or not the students receives Auditing.

27. Scientologists believe that they can attain benefits from Auditing, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT Sections."

28. Respondent's Exhibit S attached hereto is a copy of a document headed "THE BRIDGE" which was published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

29. In contrast to Auditing, Auditor training and other courses furnished by the Churches of Scientology are instructional or educational; the student is expected to understand and learn the material which is the subject matter of the particular course he or she takes. As used herein, "course" means and refers to such services and not to Auditing. Some courses include Auditing by students and Auditing of students.

30. The Churches of Scientology deliver Auditing and training at various levels. A Scientologist who receives Auditing begins at the lowest level and progresses step by step to higher and higher levels. A Scientologist who receives training also begins at the lowest level and progresses step by step to higher and higher levels. Only Auditors who have been qualified by training at an appropriate level can deliver Auditing at that level.

31. Some of the Churches of Scientology also deliver administrator and executive training courses. The students in such courses are taught the management methods and policies of the Churches of Scientology, and are mostly staff members of the Churches of Scientology. Such courses are occasionally taken by Scientologists who are not staff members. The subject matter of such courses includes Scientology doctrines, tenets and codes which are applicable to the administration and management of Scientology organizations.

32. The Churches of Scientology also deliver a few short courses of a general educational nature, designed to remedy educational deficiencies and to teach Scientology study methods, to enable the student to progress more rapidly in Scientology courses.

33. All of the courses offered by the Churches of Scientology are founded upon the doctrines and tenets of Scientology, in the manner of presenting the material studied and in the instructional methods.

34. The Scientology and Dianetic Center of Hawaii offers Auditing at Grades I through IV.

35. The Church of Scientology of Hawaii offers Auditing from Grade I through Grade IV and Auditor training from Class I through Class IV.

36. The Churches of Scientology have established charges for Auditing and for courses they deliver, and refer to payments of such charges as "fixed donations" or "fixed contributions." Such payments are hereinafter referred to as "fixed donations."

37. Fixed donations are sometimes made for an Intensive of 12½ or 25 hours of Auditing.

38. Respondent's Exhibit T attached hereto is a copy of a schedule of fixed donations and book order form, copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

39. Fixed donations constitute the source of most of the funds of the Churches of Scientology. Their only other source of funds is from sales of Scientology literature, tapes of lectures by L. Ron Hubbard (the founder of Scientology) and artifacts.

40. The payments made by petitioner were fixed donations.

41. The Churches of Scientology do not actively solicit contributions from their members or from the public other than fixed donations.

42. Petitioner first became a Scientologist in 1971 when she attended activities of the Scientology and Dianetics Center of Hawaii.

43. The Hubbard Qualified Scientologist Course (HQS) is an introductory course, one purpose of which is to familiarize the student with certain basic techniques used in Auditing.

44. Respondent's Exhibit U attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

45. The Communications Course is an introductory course one purpose of which is to introduce those unfamiliar with Scientology to certain concepts of Scientology.

46. Respondent's Exhibit V attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

47. The Communications Course referred to in respondent's Exhibit H was attended by petitioner's daughter, Karen.

48. The Communications Course referred to in respondent's Exhibit I was attended by petitioner's daughter, Laurel.

49. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit J was attended by petitioner's daughter, Karen.

50. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit K was attended by petitioner's daughter, Laurel.

51. Respondent's Exhibits W through AQ attached hereto are copies of documents, each of which was published and/or copyrighted as follows:

W Two page flyer, first page headed "Knowledge Services—Books," published by ASHO (Church of Scientology of California) and copyrighted by L. Ron Hubbard.

X Booklet entitled "Scientology & Dianetics," published by Church of Scientology of California.

Y Magazine, the cover of which is missing, published by the Founding Church of Scientology of Washington, D.C. and commencing with an article entitled "The Dangerous Environment."

Z Booklet entitled "Church of Scientology Information, Definitions, Rules," copyrighted by L. Ron Hubbard.

AA Flyer Entitled "Gain Respect for Self and Others Through Scientology Training," published by the Los Angeles Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AB Flyer entitled "Your Road to Total Freedom," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.

AC Flyer commencing with excerpts titled "On Exchange," published by the San Francisco Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AD Flyer entitled "Scientology Auditing gives you a chance to handle your environment better," published by The Church of Scientology Foundation (Church of Scientology of California) and copyrighted by L. Ron Hubbard.

AE Booklet entitled "Your Road to Clear Goes through ASHO Foundation," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.

AF Magazine entitled "Advance," Issue 18, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AG Magazine entitled "Advance," Issue 19, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AH Magazine entitled "Gateway," Issue 61, published by the Church of Scientology in San Francisco (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.

AI Magazine entitled "Gateway", Issue 73, published by the Church of Scientology in San Francisco (Church of Scientology of California).

AJ Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 92 Worldwide, published by New American Saint Hill Organization (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.

AK Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 91 Worldwide, published by New American Saint Hill Organization (Church of Scientology of California).

AL Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AM Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AN Magazine entitled "Clear News," Issue 107, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AO Magazine entitled "Clear News," Issue 104, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AP Magazine entitled "Realty," Major Issue 96 published by Church of Scientology of California and copyright by L. Ron Hubbard.

AQ Magazine entitled "Realty," Issue 103, published by Church of Scientology of California.

Petitioner objects to each of said exhibits on grounds of relevance, hearsay and the first amendment.

52. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that Scientology was at all relevant times a religion.

53. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that each Scientology organization to which petitioner paid money was at all relevant times a church within the meaning of I.R.C. § 170(b)(1)(A)(i), a corporation described in I.R.C. § 170(c)(2) and exempt from general income taxation under I.R.C. § 501(a) as an organization described I.R.C. § 501(c)(3).

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UNITED STATES TAX COURT

(Title Omitted in Printing)

EXCERPTS OF TRIAL TESTIMONY

TESTIMONY OF BRUCE GAINES

* * * *

[101] Q. Would you please describe for the Court what Scientology is.

A. Sure. Scientology—the word comes from Latin scio and ology. Scio meaning knowing in the fullest sense of the word and ology being the study of knowing—or the study [102] of whatever the prefix is. So Scientology basically means the study of knowing in the full sense of the word. Now, one of the basic tenets of Scientology is that man is basically—the real man is basically a spirit. That man is actually composed of a spirit which has lived for thousands and thousands of lives.

And he has a mind which he used to remember with, to compute with, think with and to—as an assist in controlling the body in the physical universe, and then he has a body. He is not that body. He is himself a spiritual being.

Now one of the other important points about Scientology and the approach that we take is there are many other religions that believe that man is a spiritual being, and that he reincarnates throughout various bodies time and time again.

But what we try to achieve is a gradient approach to the person discovering himself, his true nature. And his nature as a spiritual being or Thetan, as we call it. Now, it's been found quite unworkable. The person comes in off the street, and you say to him, well, fellow,

you're a spiritual being. You've lived thousands of years, and you know, you've got all these abilities, and you've got—you've just forgotten all this stuff.

And you now think you're a body, but actually you're [103] really a spirit so knock it off and actually all the barriers that you have—that you're actually achieving the full nature of the spirit or they were put there by you so knock it off, and just return to your native state.

This is found to be not only not workable, but gets you a few rather strange glances. So the procedure of auditing is a gradient approach to allowing the person and guiding the person into looking at himself and realizing more and more about himself and his nature.

And the goal of that is to get the person to truly realize his spiritual nature. Now, there are a few things about this spiritual nature is that one of the discoveries and basic tenents of dianetics which was the precursor of Scientology was that man is trying to survive.

Well, life is trying to survive, and life is not just trying to survive as himself, but he is trying to survive in a much broader area which we break down as what we call the eight dynamics.

Now, the dynamics are basically the urge to survive as self, as one's self, one's possessions, one's success in life, and the urge to survive through the sexual act and family where one has—one tries to survive through building up families and having children to carry one's name, et cetera, and through one's groups that one belongs to whether these are small groups like a PTA or a larger group like a [104] nation or a race, and also he is seeking to survive through humanity itself. He actually has a vested interest in the survival of the entire human race.

And he's also seeking to survive through living things, all living things including plants and animals, and he's also seeking to survive through the physical universe itself. Everything that is contained within the physical universe which we see around us.

These wooden or carpeted or whatever things and the space that contains them. It's part of the physical universe and he's seeking to survive through that. And he's also seeking to survive through the spiritual universe.

Now, our viewpoint is that spiritual universe is actually senior to the physical universe in that the physical universe is created through the agency of the spiritual universe, and beyond that, he is seeking to survive through the eighth dynamic or God, the supreme being or infinity.

And these things are all inclusive one within another. The self is included within the family. The family is a type of group. The group is a part of humanity. Humanity is a part of all living things. All living things are a part of the physical universe, and from our beliefs the physical universe is actually a part of the spiritual universe, and the spiritual universe is actually a part of [105] the eighth dynamic or God.

Now, so he's seeking to survive through those areas. Now, to the degree that he's not surviving, this is as a total result of his inability to know, or things he has forgotten. Now, this guy has lived through thousands and thousands of lives, and during those lives, there were things that happened to him.

There were many things that he did that he regretted. There were things that others did to others that he failed to handle and he feels bad about, and as a result of all these things, he has made decisions to lessen himself. For instance, the situation where he might do something harmful to another.

One of the basic things about a Thetan is that he is basically good. In his basic nature without any of the other junk that he has attached to himself called the mind with things in the mind, he is basically good. So when he does something that is harmful, he actually lessense his own power and awareness to prevent himself from doing more bad things to other people, and as he comes down through these various lives, he gets down

to the point where he actually finds himself today on earth in the body, and he actually thinks he's a body.

So this is a decrease in knowingness, in his knowingness of himself, in his knowingness of all the dynamics. [106] Now, knowingness of the dynamics is actually broken down in Scientology which is another important principle, and in understanding is broken down into what are called affinity, reality and communication.

Now, affinity is the degree of liking for something, or more technically it's the willingness to occupy the same space as something. In other words, if you have someone that you wouldn't want to be within 4,000 miles of this person, then your affinity level for this person is not very high.

So this is a degree of liking or tolerance of space. And reality is basically that which is real or that which is agreed upon, or the degree of agreement that two beings can come into play. And communication which is the most important part of this is the interchange of ideas between two living beings, and the way this relates is that they are actually interrelated in the sense that if you don't like someone it is very difficult to talk to them, and you find yourself not agreeing with them, but if you find things that you can agree with—when you can agree with them with then you can find yourself communicating more and your affinity actually raises.

So any point of this triangle or this tri-part type thing can be raised by raising one of them, and the most important part of that is communication because communication has been found to be the universal solvent, and once [107] communication is actually established, one finds that there are things that can agree upon, and things that you—one can like about you as a person or the subject being studied, and thus knowing this and understanding is increased.

I hope that's adequate.

Q. Pretty inclusive. Let me ask you this. How does dianetics fit into Scientology? You mentioned early—a precursor, but what is it now?

A. Well, within the practice, it's been incorporated within the religious body of Scientology. Dianetics was a precursor in the sense that through dianetics and through the practice of dianetics, L. Ron Hubbard discovered that people were—that this—the existence of earlier lives, and he found this in eventually all the people that were given the dianetic techniques, and so he said, now, wait a second.

What is this thing that goes through this earlier lives because you're basically not really settled that. You talked about the awareness, and the awareness unit, and you've talked about life, trying to survive, but he said, well, we don't really know what this life is and what the nature of it is.

But then whe he got—discovered this existence of earlier lives, and he decided he better study what this thing is, and he found in the Thetan that which—which goes through all these several lives in these several bodies, [108] and he started studying the nature of the Thetan and ways in which the abilities and the knowingness of the Thetan could be increased.

Now, dianetics in the present time does play a part in auditing procedure and it is in dianetics that one looks at these times in the past where one has had things happen to one and created or done things to others that one felt bad about or observed others doing things to others that one felt about not having handled.

Q. Now, I get a general idea of what the religion of Scientology is. What role does this auditing play in the religion?

A. Well, it's the central activity of the religion.

Q. Why is that?

A. Well, through auditing, the person actually comes to know, comes to know himself. He comes to know without any kind of telling him or evaluating for him or invalidating him or in any way even leading him into some sort of belief.

It's the way in which a person actually achieves knowingness which is what Scientology is about. It's the study of knowing how to know.

Q. What happens in an auditing session generally without regard to the specifics that go on?

A. Okay. In an auditing session, the auditor or the [109] minister sits in a room, closed, private room with what is called the pre-clear. That means a person who is not yet clear. He still is seeking to understand more about himself and life.

But he is not yet clear, and they sit across from each other with a table usually in between, and in most cases there is a E-Meter present and the pre-clear holds the cans of the E-Meter, and the auditor is in a position to observe the reactions on the E-Meter.

And basically, the auditor simply asks the pre-clear certain questions. Thees are specific questions and patterned questions which are laid out in the doctrines of L. Ron Hubbard and he listens to the pre-clear's answer and acknowledges him for that answer, and he may repeat the question as long as is necessary from the pre-clear to actually come to a realization on his own about himself or life.

Q. What is the—strike that. Does the auditor or the minister counsel in the ordinary sense of the word the pre-clear, advise him or tell him to do something to change his life or whatever?

A. No, there is no counseling in that sense. The person is just invited, and he's invited to look at certain areas of his life, and to come to the realization about those.

Q. Would an auditor ever tell him you're wrong or you did the wrong thing, or anything like that?

A. No. One of the major points of an auditor is there [110] is an ethical code which an auditor must follow called the Auditor's Code, and some of the points of that code that he must never evaluate for the person or tell him what he should think about himself.

Or he must never invalidate the person and tell him he's wrong or he's bad. If the person tells him this thing that he feels really bad about, the auditor is not permitted to say you did that. Or that was an awful thing to do. So he's never permitted to do that, and he's never permitted to get angry with the pre-clear at anytime during the auditing session.

He's never permitted to decide to walk off from the pre-clear when he's in the middle of something. He's—those are some of the main points of the Auditor's Code.

Q. Does an auditor teach a pre-clear anything?

A. No.

* * * *

[111] BY MR. HARRIS:

Q. What sort of training is done in the Scientology Church? We talked about auditing. I want to now go to the training side.

A. Right. Right. The main training which is done in the Scientology Church is to train a person to be an auditor or audit another.

Q. And in connection with this training, what is—how is it done generally? Just describe a course for me.

A. Okay. A course room would be a large room, say, maybe about the size of this, and there would be tables and there would be students, and there would be tape players, and a person would—in general, the general structure of the training course is the person studies certain of the materials that are written by L. Ron Hubbard.

He may also listen to tape recorded lectures by L. Ron Hubbard, and then he would drill or do exercises to enable him to smoothly do a counseling or an auditing session. And then he would actually go in and audit another person and he would also receive auditing himself as a part of the training course, the purpose of this being that he gets his knowingness himself on the materials and what happens and what is actually going on with the pre-clear.

MR. HARRIS: May I have just a moment, Your Honor?

THE COURT: Is the E-Meter an integral part of [112] auditing?

THE WITNESS: Usually. There are auditing procedures that don't use an E-Meter, but in most auditing procedures there are E-Meter is used.

THE COURT: I don't want to steal your thunder, but I would like to know under what circumstances you use an E-Meter, and under what circumstances you don't use an E-Meter.

THE WITNESS: Okay. The circumstances where you use an E-Meter is when you're doing something where you actually having the person look at himself and his mind. In other words, these are situations where you're having the person look into himself.

There are procedures in Scientology called objective processes where you actually get the person to look at and touch and familiarize yourself with the physical surroundings, his actual physical universe environment. I that situation you wouldn't use an E-Meter.

BY MR HARRIS:

Q. What percentage, Mr. Gaines, of the processes that are used in auditing are so-called objective processing? If you had to put a percentage on it?

A. If I had to put a percentage on it, about ten percent.

Q. All right.

THE COURT: So 90 percent of the auditing involves [113] an E-Meter; is that correct

THE WITNESS: Yes.

MR. HARRIS: Your Honor, I'm going to show the witness Exhibit 5—excuse me, S. Is that correct. Yes. I'm sorry. It is an S which is Respondent's exhibit attached to the Graham stipulation. You may have it already.

THE COURT: I do.

MR. HARRIS: And I'm going to do him a favor and really authenticate it. May I approach the witness, Your Honor?

THE COURT: Yes, indeed.

BY MR. HARRIS:

Q. You have seen Exhibit S?

A. Yes.

Q. Would you please look at Exhibit S for me?

A. Yes.

Q. What is Exhibit S?

A. This is the classification, gradation and awareness chart of levels and certificates.

Q. And what's its role?

A. Well, I talked about it a little bit before, the gradient approach to regaining full knowingness as a spirit and these—the right hand side of this chart describes the level that one goes through on auditing and the left hand side of the chart describes the levels that one goes through [114] and trains up on as an auditor in the training side.

Q. All right. Now, is the auditing that one receives on the training side, and that one gives the same as the auditing over on the right hand side of Exhibita S?

A. Yes, it is.

Q. Have you heard of the expression the training route to clear?

A. Yes.

Q. What is that?

A. Well, that's where a person decides to actually do the training courses of Scientology and where a person would with another student co-audit. In other words, he would audit that student and that student would audit him all the way up the levels. So in actual fact, he would get both the training and the data of Scientology as well as actually getting his own route to clear.

Q. And what is the—well, strike that. Does the Church, and I'm talking about each of the churches for which you've worked, does it encourage one side or the other of the bridge

A. Yes.

Q. Which?

A. Training side.

Q. Why?

[115] A. Because it's the church's basic goal is something we've described and it's to clear the planet, and what this means is to get enough people to the level of clear and OT and so that due to the fact that they have obtained this awareness themselves, they have become better persons.

They become more themselves, and therefore they create better effects on all of their dynamics. In other words, it's not just simply a situation where you're trying to help one person. This person—the purpose of helping this person is so that he can also go out and on all areas in his family, in his groups, in humanity, in living things, in the physical universe and the spiritual universe and with God, he can actually improve these areas.

Now, the idea scene or what we're trying to achieve is the clearing of the planet where enough people are actually have done this so that we have a new cilization without crime, insanity and war.

So now, when a person gets audited, there is some of this ripple effect across all of the dynamics because of the fact that he becomes more himself and he becomes more constructive, and he becomes a better person.

But when the person is also trained, that person has the understanding not only of himself but he also has the understanding of others and so that he can assist others to actually relieve himself of the sufferings of life, and

[116] And therefore, he creates a much larger and much broader effect on the environment around him.

Also, when the person does training, you get a trained person. You get on the co-auditing—you get—he's going to audit somebody else to clear. And also he is going to be audited to clear so you get more benefit in terms of the church's purpose from training than you would from just auditing.

* * * *

[117] Q. Could you tell me, Mr. Gaines, what is the HAS and just for the Court's benefit, maybe you can point it out on the grade chart. Exhibit S?

A. Right here. HAS, the second—on the left hand side, the second one up.

THE COURT: I get you.

THE WITNESS: Okay. The HAS is an abbreviation for the Hubbard Apprentice Scientologist. And what this course is is one studies some of the data of L. Ron Hubbard, and then one does exercises which are designed to improve ability and awareness in the area of communication by doing exercises on each of the parts. One of the things in Scientology is we have broken down communication into its parts and done [118] quite a bit of study in communication just because of the fact that it's the central part of the ARC triangle. So one does exercises to improve one's ability and awareness on each of the parts of the communication formula.

And usually one will study one of the introductory books for—of scientology as a part of this course.

BY MR. HARRIS:

Q. And what is the purpose of that, of the result that the church is seeking in that course?

A. Well, the result that the Church is seeking is a being who is much more able in the area of communication and thus will be able to actually listen to people, will be able to get across his ideas, and as a result he will have a better life and others around him will have a better life.

Q. All right. How about the HQS, and maybe you can describe where that is on Exhibit S?

A. Right here just below this line, not classed, HQS. Okay. That's the Hubbard Qualified Scientologist course, and in this course one studies more of the writings of L. Ron Hubbard, and one learns to do procedures called assists. Now, what assists are is a simple auditing procedure to help out a person who has become ill or injured and to help him to get over the spiritual effects of this traumatic experience.

And as a result of the course, the person actually is [119] able to do these assists on other people. Now, the other thing that is studied is what I talked about before in terms of the objective processes.

These are procedures where a spiritual being is oriented to the physical universe and gains awareness and control—gains awareness of his ability to control himself and the—himself in relation to his environment, and he actually receives auditing on these objective processes, and he delivers to another auditing on these objective processes. That's the HQS.

Q. Student hat.

A. Okay.

Q. Words, that, first of all, on the grade chart, if it is.

THE COURT: I remember what a hat is.

THE WITNESS: It's actually not on this grade—

BY MR. HARRIS:

Q. All right.

A. It's a prerequisite to all the Class 0 auditor, Class 1 auditor, Class 2 auditor. It is on the grade chart.

Q. What is the student hat?

A. Right. Student Hat is a course where one studies primarily the lectures of L. Ron Hubbard and some other —the writing of L. Ron Hubbard, and the purpose of this is to enable the person to study further courses in Scientology [120] and to be able to attain affinity, reality and

communication with the materials that one is studying, and it's basically some discoveries.

Let me just kind of divert a bit. One of the church's goals is in terms of training many, many people. The reason for this is that one can't—we can't all sort of hit at L. Ron Hubbard's door and wait for him to audit us. So we want to train a lot of people.

Now, many people have—they come in and they say, all right, we'll, I'd like to learn about this. But they didn't know how to study. In other words, they weren't able to really understand and be able to apply the materials of the auditor training.

So L. Ron Hubbard did some research into the area of study, and applying the understanding of what we have here on the Thetan mind and body to the area of study we came up with some discoveries on the nature of studying and what actually education really is.

And these are the things which are studied within the Student Hat and certain exercises are also done which enable the person to attain an understanding of materials that he is actually reading.

Q. This would be like a prerequisite to other training courses are you saying?

A. Yes, it is.

[121] Q. Okay. How about an action which is called HSDC?

A. Right.

Q. What is that and where is it on the grade chart, if it is.

A. It's not on this grade chart. This is prior, I think, prior to the—it's comparable to where—you see these little two lines here. This permanent HDC. Oh, that is the same thing. Standard dynamic—it's called standard dynamic auditor on here.

It's right above not-classed.

Q. Okay.

A. So that that means is Hubbard Standard Dianetic —Hubbard Standard Dianetics Course, and in this one

when studies the basic theory of the relation between the Thetan and the mind, and all these things which have the relation of the mind to these experiences that I described before which had happened to the person throughout this progression of lives.

And it contains the basic understanding of how to get the Thetan out of the barriers that he has created for himself as these experiences and a result of these things which he has put in his mind to—as he went through the progression of lives.

And one learns—one does again exercises in how to audit another person on standard dinetic auditing, [122] and one then actually aduits someone on standard dianetics and one receives auditing oneself on standard dyanetics.

Q. And what about method one auditing? What is that, and is it on the grade chart?

A. No, it's not on the grade chart actually. No, it's not on this grade chart. It's an actual grade or level particularly. It can be done at any point on the grade chart.

But basically what it is is you have a situation where this Thetan in his earlier studies through this lifetime and earlier lives has not exactly been totally responsible with regard to his mind and he's gone past in these studies various things which he didn't understand.

And then he just continued and didn't really say, all right. Well, wait a second. I don't understand this so I've got to clear this up. So he didn't do that. He just continued. So through this track of doing this, he has wound up at the present time with a mind that is rather muddled on the subject of study.

So what method one auditing does is it has him go back to or take a look at these earlier areas in his study in this lifetime and earlier ones where he has gone past these things he didn't understand and to actually take responsibility as a Thetan for these things by clearing them up.

* * * *

[129] A. Okay. Remember I described the four that one of the basic tenets of our religion is that understanding consists of affinity, reality and communication. Now, one [130] of the purposes of auditing is to restore to the person a higher level of affinity, reality and communication in present time so that his understanding is much greater and thus he can pursue his own goals and help others and expand out along the dynamics.

Now, straight wire is somewhat technical term which means that it's just basically—all it means is recalling things. It means—straight wire comes from stringing a wire—it's an anology basically of stringing a wire from present time into the past, to an incident in the past.

Now, what ARC straight wire deals with is it has the person recall past moments of high affinity, high reality and high communication. And what this does is one of the—another additional doctrine of the church is prior to any upsettign or spiritually disturbing experience, there is a time when basically things were good when there was high affinity, reality and communication.

So you actually sort of bypass this upsetting or emotionally upsetting experience by having the person recall the prior point where it was actually truth, where there was high affinity, reality and communication, and this creates—it lessens greatly the effect of these later spiritually upsetting experiences.

And what the person achieves in the end of these auditing procedures, of the ARC straight wire is he knows he [131] won't get worse. In other words, he'll know as a spiritual being that there has been affinity, reality and communication in the past, and there will continue to be, and he actually is the source of these things. He actually can create affinity. He actually can create reality. He actually can create communication, and therefore, he will not deteriorate, and that's what ARC straight wire is about.

It's an auditing procedure.

* * * *

[133] Q. And in terms of the benefits that the Church expects a parishioner to receive who either takes the training or the auditing, what is that?

A. Well, that's basically an increased spiritual awareness and ability and increased affinity, reality, and communications with himself and life along all the dynamics.

Q. And how does this, if at all, serve the purposes of the Church?

A. Well, again, to go over to—to try not to be repetitious but our purpose being to clear the planet and help create a new civilization without war, insanity and those sorts of things, this contributes to that goal because that's one more person that is that much more aware and, [134] that, you know, that much more his own basic nature.

Q. In respect to your position as a course supervisor or auditor, what does the parishioner expect to receive? In other words, is he in the same position as the church?

A. Not necessarily, no.

Q. It depends on the person?

A. It depends totally on the person. There is many reasons why people start courses in auditing and Scientology as there are people who start courses in auditing and Scientology.

Q. Okay. Now, are there any services which a member of the Church can receive without making payments or fixed donations, as it were?

A. Yes.

Q. What would they be offhand quickly?

A. Okay. Well, he could correct ethical counseling. He could receive counseling from what is called the chaplain which is a part of every organization, church organization of Scientology, and this woud basically be if a person was upset or something happened or he was just all and just needed to talk to somebody, he could go and see the chaplain, and the chaplain would help him out and counsel more in the sense that you referred to before in terms of giving advice.

But he would also listen and understand—try to [135] understand what the difficulty the person was going through. Also, if the person was in the situation where the person became ill or injured or something like that and he's in the hospital or something like that or he was home laid up, the Church would send a minister out to give him assist, as I described before, where to help him out with his recovery.

Weddings, funerals, baptisims are not—there is no fixed donation for.

THE COURT: Is donation encouraged?

THE WITNESS: For those things?

THE COURT: Yes.

THE WITNESS: Not so far as I know. It's not been my experience. If a person is upset with some part of the organization, something happens in his auditing or something happens in his training that he got quite upset and, you know, it's really—I mean basically he's upset. He would get a free auditing session to help straighten that out and handle his upset with the Church.

Also, on the training courses one of the things that one does is one goes out and finds somebody in the street or a friend and brings him into the Church and does some auditing on him, and that's at no charge to the person receiving the auditing.

That's pretty much it.

MR. HARRIS: All right.

[136] BY MR. HARRIS:

Q. What, if you know, are the reasons that the Church charges fixed donations for particular actions on the grade chart?

A. My understanding of that is—

THE COURT: What is your understanding based on?

THE WITNESS: On my training in Scientology.

THE COURT: Go ahead.

THE WITNESS: Yeah. It's based upon the doctrine or the idea of exchange, and the way this comes is I

talked about a good—man is basically good. Now, one of the things discovered about this is that due to his nature as being basically good, if you continue to contribute to him, you continue to help him without him helping you in some way or contributing something, or exchanging something, he actually goes downhill.

He will actually decrease his power and awareness. The reason for this is you start to feel that he won't deserve it, and this doctrine of exchange is based on some of the earlier writings called the factors where he describes the—

BY MR. HARRIS:

Q. He?

A. L. Ron Hubbard. Sorry. Describes how the earliest points of a Thetan's entrance into the physical universe and how such things as energy, life and further creation is [137] accomplished, and it's basically in terms of the interchange of particles, the interchange of things within the physical universe.

And we view money basically as a form of energy. On our organization board, there's a department of income which is concerned with the income of the organization and its awareness level is that of energy.

And basic—that's the basic—my basic understanding of the fixed donations.

THE COURT: Why give away anything then?

THE WITNESS: Well, because if you look at things that we do give away like there are times when a person is not able to donate. You know, it's not really—I mean if a person is lying in the stret and he's just been hit by a car, you can't really say well, can you get to your wallet first.

You have to assist him, and, you know, when you assist him he actually becomes more able himself and then he can contribute.

THE COURT: Then you ask to contribute energy or whatever you call it?

THE WITNESS: Well, not for the assist particularly.

THE COURT: What about the chaplain? Somebody comes to see him—would the chaplain urge the person saying to contribute energy?

THE WITNESS: Not for that service, no.

[138] THE COURT: Not for—

THE WITNESS: No, this is just—

THE COURT: Or to take courses that would permit him, put him in a position where he could contribute?

THE WITNESS: He might. Might.

THE COURT: I think it would be logical.

BY MR. HARRIS:

Q. From the standpoint—well, strike that. How many Scientology corporations have you worked for during the course of your period of time in Scientology?

A. Five.

Q. Any differences in the way that they operate?

A. No fundamental differences, no.

Q. Essentially one is the same as the other?

A. Right. Except they are in different locations.

Q. Okay. During your tenure on staff have you been involved in financial matters?

A. Yes.

Q. In what connection?

A. When I was LRH communicator from '74 to '75, I was involved in what is called financial planning committee, and what this is a committee of staff members that meets at the end of each week and decides how the income of the Church is to be appropriated in terms of the rent, the electricity and another other bills, paper, promotion, [139] salaries.

Q. The budget of the church?

A. Right.

Q. As it were. All right. And what is the source of the income that that committee has to work with?

A. The donations that have come into the church that week by parishioners.

Q. Would that include advance payments as well as somebody who comes down and plunks down the energy, as it were, and begins something immediately?

A. Sure.

Q. Okay.

A. They're not treated any differently.

Q. All right. And are the funds that somebody pays whether it be advanced payments or a fixed donation where they start the service right away, are these segregated in any way?

A. No.

* * * *

TESTIMONY OF KATHERINE JEAN GRAHAM

[163] DIRECT EXAMINATION

BY MR. HARRIS:

Q. Are you one of the Petitioners in these cases that are here before the Court?

A. Yes, I am.

Q. Do you know generally what the case is about?

A. Yes, I do.

Q. What is it about?

THE COURT: Well, i assume this is Katherine Graham?

MR. HARRIS: Yes.

THE COURT: Formerly Katherine Graham.

MR. HARRIS: Formerly, yes. At the time Graham, now Elliott.

THE WITNESS: The case is generally about the fact that in 1972 I made contributions to the Church of Scientology and on my '72 income tax return I listed those contributions as a taxable deduction. And later I was told by the IRS that they weren't allowable as deductions and deciding which way that is to go is why we are here.

BY MR. HARRIS:

Q. Okay. You are a scientologist?

A. Yes, I am.

Q. When did you become a scientologist?

A. In 1971.

[164] Q. Where was that?

A. That was in Hawaii.

Q. Would you give us just a brief summary—

MR. HARRIS: I know at least for general background, Your Honor, I am just going to ask her general education, occupational experience.

BY MR. HARRIS:

Q. Would you just give us a brief summary of your educationa and occupational experience?

A. Yeah. I went to high school and I attended college for six months.

Q. What college?

A. St. John's College in Annapolis, Maryland.

Q. Go on—

A. Okay. And job-wise I have been an assistant in the biology lab. I worked as a job employment counselor. I have been a computer operator and programmer and systems analyst. I have also worked as a telephone operator, and right now I am working for a company that sells wholesale and retail art pictures, prints and laser pictures.

Q. A what kind of picture?

A. Laser, the laser photographs.

Q. Oh. Okay. Before being in scientology, had you been in another religion?

A. Yes, I had.

[165] Q. What was that?

A. Well, when I was a little girl I was a member of the Episcopalian Church, and later when I was teenager, I joined the Presbyterian Church.

Q. All right. Would you describe your understanding of Scientology beliefs?

A. Well, basically, what we believe in Scientology and why my understanding of it is is that each of us is a spiritual being. We are not a body; we are not a mind; we are not the pictures that we look at in our head, but a spiritual being separate from the body. And basically what has hapepned is that at one time, collectively, as spiritual beings we were very good and very able, with a high moral code, a high ethic level. And what has happened is that the spirit created a game to play with bodies and assumed over a long period of time, different bodies and has lived many, many lives. And what happens is that the spirit has degraded himself by doing this and has done bad things and then restrained himself and lost his abilities and become unethical and immoral. And it just gets worse, and worse and worse, which you can just see if you look out in the street today.

And in Scientology, we have the path out of this dwindling spiral, so to speak, and you can in Scientology get back up to the once high level as a spiritual being and [166] become free of the degradation of your past sins or overt acts. And you can become again very, very able, moral, ethical and tremendously responsible, not just for yourself, but for your family and any group that you belong to. And as you go up the levels in Scientology and become more able, you also become more responsible for everybody on the planet. You want to make it a nice place for everybody. One of the reasons being because, being an immortal being, you know you are going to be continually living here and you want to make it a nice place for yourself to come back to.

Q. All right.

THE COURT: Sort of a sins of the fathers in reverse, is that right?

THE WITNESS: Yes.

BY MR. HARRIS:

Q. Did you pay some money to a Scientology church in 1972?

A. Yes, I did.

Q. Do you recall approximately how much?

A. It was about $1,600.

Q. Why did you pay money to a Scientology church in 1972?

A. Well, because it was—I considered it a religious donation and it was I wanted to do. There were certain religious services that were available and, for me, it was [167] also the fact that it was my church. And I learned in the Presbyterian church that you are supposed to tithe 10 percent, and I was willing to contribute to the Church of Scientology. I felt they were doing something that was worthwhile for mankind and I wanted to help.

Q. Did you expect to get particular religious services in exchange?

A. Yes, I did.

Q. Did you?

A. Yes, I did.

THE COURT: Like what?

THE WITNESS: Well, there was the basic courses that I went to which trained me in the basics of Scientology, which was like similar to the confirmation class that I went to in the Presbyterian church. And I also learned the basics of auditing which made me able to help others with auditing. And then I also received some auditing that year, too.

BY MR. HARRIS:

Q. Were there services in which you participated for which you did not make a donation or payment in 1972?

A. Yes, there were. There was things like Sunday service and weddings, and naming ceremonies, which is like a christening, you know, in a Christian church, and

also there were Friday night meetings where we met and the people [168] who had completed different levels in Scientology would tell about the wins they had had.

And also there was a group called the Auditors Association where different people trained as auditors got together on Sunday night and had—listened to lectures and tapes.

Q. All right. Did you participate in any other activities of the church having to do with people outside the church? That's probably a poor question. I'll withdraw it.

By the way, the $1,600 or so that you paid in 1972, was any of that amount for books, E-Meters or anything tangible?

A. No, it wasn't.

Q. Had you, in earlier years, bought such items?

A. From the church?

Q. From '72. In other words, in 1971 or—

A. Yeah, I had bought books in 1971 from the church.

Q. In 1970, on your 1971 tax return, did you deduct those as charitable contributions?

A. No.

Q. In 1972 did you buy any books or tangible items from the church?

A. Yes, I did.

Q. And did you deduct those?

A. No, I didn't?

[169] Q. All right. Now, what were the, going back to the time that you first got into Scientology, did you have an idea that you were in a religion?

A. Not at first. No, not at first.

Q. Why not?

A. Because when I belonged to the Episcopalian church and the Presbyterian church, first of all, there was the physical layout of the building. You know, the Episcopalian church back in Pennsylvania was this stone building with a steeple and the stained glass windows, and the Presbyterian church was similar to that, but not

as imposing. And the church in Hawaii didn't have the same physical arrangement, it was some rooms on the second floor of a two-story office building. So it was kind of like I just had a pre-conceived idea of what a church should look like physically.

And when the other thing that made me not certain whether it was a religion was because in the Episcopalian church and the Presbyterian church, the service has got a definite format. Yon know, the minister delivers the sermon, the choir sings, the people sing, the people pray, and like that. And in Scientology we didn't have that kind of a format to it. So it was—it didn't fit in with my idea of what a religion should be like visibly, if you know what I mean.

Q. Okay. Did there come a time when you believed that [170] what you were in was a religion?

A. Yes, there did.

Q. When was that?

A. That was in 1972.

Q. What happened that made—

THE COURT: Caused that.

MR. HARRIS: Right.

THE WITNESS: Well, there were two things. One of them was when I was learning how to be an auditor. And I was auditing my friend Pualani, and all of a sudden, in the middle of the auditing session, she just stopped and she got this wonderful, just a fantastically happy look on her face, and she just seemed to open up, and say, oh, this is fantastic, this is wonderful. And basically what had happened was that she had gone, what we call in Scientology "exterior", which means that as a spiritual being, she had actually left her body and and was aware of being a spiritual being and not just a meat body.

And she was so excited about and so happy. And the thing that I really liked was that I knew that I had helped her to become aware of herself as a spiritual being. And I had read about it in the Scientology books, that this was possible, but it wasn't really real to me that

it could happen to somebody. And it was something I had been, you know, looking for, that, yes, this could really happen.

[171] And then the other time was later when I was receiving some auditing, and in the auditing session I was able to recall a time in my past when I had been a very, very old lady in another body, and I had been very old and very tired and my friends, my two old friends, were sitting by the bed. And I was just tired, I was worn out. I didn't want to go on anymore. And it wasn't like pain or anything like that. And I recalled that I just, as a Thetan, a spiritual being, I said, okay, that's it, I am not going to do this anymore.

And I slid out of the body and out of the room and out into the sky, and this was what I remembered in the auditing session. And I went up into the air and it was a sunny day and there was a green hill and a blue sky and there were little children playing. And being free of the old body was such an incredible feeling. I looked at the little children and I thought, oh, I want to go and do that again. And it was like I was able to remember then as a spiritual being, yeah, we can, you know, we can go and do this again.

And as soon as I decided that that's what I wanted to do, there was just a new—a body in the womb and that was the one I took, changing from one to another.

And what happened was that in the auditing session, while I was remembering this experience, I myself left this [172] body and could feel the freedom of being just a spirit. And it was—there is no way to describe that feeling of freedom and that total certainty that you really are a spiritual being and not this stuff here.

And to me, that was what I had been looking for in a religion all my life. So that was when when I knew this was a religion.

MR. HARRIS: All right. Were you given Exhibits C through Q of the stipulation in her case?

MR. KAMMAN: Your Honor, I have an extra set.

MR. HARRIS: I do, too.

MR. KAMMAN: For the witness.

MR. HARRIS: Just so we are—Maybe the Court could have the—

THE COURT: That would be good.

MR. HARRIS: Okay. May I approach the witness, Your Honor?

THE COURT: Yes, indeed.

BY MR. HARRIS:

Q. I am going to show you Exhibit C and ask you if you recognize that?

A. Yes, I do.

Q. And the service that is indicated there is HQS.

A. Yes.

Q. All right. What was that?

[173] A. Well, the HQS stands for the Hubbard Qualified Scientologist course, and it is a beginning course in the fundamentals of Scientology, the basics of Scientology, things like the ARC Triangle and communications skills. And then the other things that you learn on this course are how to be an auditor, the basic auditing things that you do.

Q. Did you actually participate in that course?

A. Oh, yes.

Q. Was it your intention at the time that you paid the money to use the fruits of that course to make a living?

A. No.

Q. Why would you take such a course, to teach you to be an auditor, if you weren't going to make some money in it?

A. Because I had already had some auditing in 1971 and I wanted to be able to help other people the way that the auditor had helped me, and I wanted to know more about Scientology.

* * * *

[178] Q. All right. Now, what benefits did you receive, other than the ones that you have indicated so far, this experiencing rebirth of whatever and seeing your friend with a glow, what benefits did you receive from the courses and [179] the auditing that you received?

A. Well, one of the things that I received as a benefit is that I knew I wasn't going to get any worse as as Thetan, a spiritual being. Before I got into Scientology I had a lower moral and ethical level than I have got now, and I had been on drugs. I had been smoking pot; I had been drinking; I was an absolute mess. And after the things that I did in Scientology in '72, I didn't have those problems anymore. I didn't need those problems anymore. I started to be able to take care of my kids better. I did that because I was able to really talk to them and handle them and confront them. And my love for them increased.

I had been kind of a victimy person before Scientology. It was like, oh, poor me, look at all this terrible stuff that is happening to me. And because of the auditing and the training part of the Scientology and learning more about who I really was, a spiritual being, and what my responsibilities were, my responsibility level came up, not just for myself, you know, not drinking anymore and taking drugs. But I became more responsible about my children and also about other people, because now I know I can really help other people, I can really help this whole planet to be a better place for all of us to be.

In other words, I don't feel just responsible for myself anymore. I feel responsible for every person on this [180] planet, because I am part of it and I know that. And I think that is—that and the certainty that I am not going to just end when I die. When this body dies, it's not over. I am going to go on and I am going to continue to exist and be able to do something about life and—well, that's pretty much it.

Q. Were you taught anything in the auditing sessions?

A. No.

Q. Having experienced Episcopalianism and Presbyterianism, do you find parallels with the Scientology to those, insofar as the nature of the services are concerned?

A. Yeah, I do. All three of those have a Sunday service with a minister delivering a lecture or a sermon. The classes, or courses, or whatever you want to call them, that I took to get prepared to be a Presbyterian, my confirmation classes, that would they would be, are like the courses I took to learn about being a Scientologist.

THE COURT: How long was your confirmation course?

THE WITNESS: Maybe six or eight weeks.

BY MR. HARRIS:

Q. As a Presbyterian or as an Episcopalian?

A. As a Presbyterian.

* * * *

[199] Q. When you wrote your checks or paid your money, did you understand that the church was going to use it?

A. Yeah, they were going to use it to run the church with, to keep it there, to keep it helping people.

Q. Did you have in mind that you could--

THE COURT: We are leading the witness, aren't we?

MR. HARRIS: Well, I am trying to clear up an understanding of what an account is, Your Honor, because, you know, we tend to use accounting terms in front of people who haven't the foggiest idea what the accounting terms are, and that's what I am trying to clear up. But I may have to lead a little bit, but I will clear it up.

BY MR. HARRIS:

Q. Did you believe at the time that you made the payment that you were going to get it back?

A. No, I—It was a donation to my church. I didn't want it back.

Q. All right. Was there a physical transfer of money, to your knowledge, when you would change your mind about what religious service you wished to take?

A. No. My understanding of the whole thing is that once I had given the money to the church, that was their money, they spent it to run the church, to, you know, keep it going, and that it was merely a—The paperwork type of stuff was merely to keep track of the services; it had [200] nothing to do with money, you know. This dollar bills.

Q. The auditing to clear, that you mentioned, in 1978, what is the relationship with that and all the previous auditing that you had taken? Poor question. I will withdraw it.

If you had no auditing whatsoever, could you simply go in and get some auditing to clear?

A. No. You—It's like—In Scientology, there is different states or levels of awareness up to the total spiritual freedom. And you have got to start at the bottom because that is all that people starting in Scientology can confront, because they have got this great, huge, gigantic mess. And you have got to do it on a gradient; you can't just go bong, you are clear.

Q. All right. Now, did you purchase materials used in the HQS course?

A. Yes, I did. I bought books.

Q. Did you deduct those from your income tax?

A. No, they were books.

Q. How about course materials? Did you buy course materials for any of your courses in '72?

A. I don't remember. There were times when—On the some of the courses I have taken in Scientology, I bought a book put together with the writings of Ron

that pertained to that particular course. I don't remember if, [201] for the HQS course, there was one available there, or whether I bought one.

Q. In the cases where you have bought such materials, have you deducted those?

A. No.

Q. Are there ways other than payments that people can receive auditing?

A. Well, my only personal experience was that when I first started Scientology, I was given auditing and I didn't pay for it.

Q. How about Sunday services, did you pay for those?

A. No. And that's right, because in Sunday service sometimes they will have what is called group auditing where it is done with a group of people. You don't pay for that. And I think at our Auditors Association we did the same things. And, oh, and another way is like there is actually some auditing that I gave my children, simple auditing is geared for children, and there was, you know, it was something you can use to help people.

(Pause.)

Q. Though you, yourself, have not done it, have you heard that there are areas in Scientology auditing where one can audit one's self?

A. Yeah, there is—On the upper levels there is solo auditing.

[202] (Pause.)

Q. Did you make contributions to the Presbyterian church?

A. Yes, I did.

Q. For what purpose?

A. Well, for two reasons. One was that it was—I had learned from reading the data about the church, is that you are supposed to tithe 10 percent of your income to church, and I tried to do that within my means as a teenager. But the other thing was that it was just that's

what everybody did, was to contribute to the church to keep it, help it, run it, you know.

Q. Did you feel compelled in any way to make such a contribution?

A. No, I really wanted to do it because at the time the church was a very important part of my life, and I wanted to give it something to keep it there.

Q. All right. Are you familiar with a doctrine in Scientology called "ex[illegible]nge"?

A. Yes.

Q. What is that?

A. Well, basically, what it is is that there is flows, there is an inflow and an outflow. And if you just inflow everything and don't outflow anything, it just, it doesn't work, because eventually you will stop inflowing. [203] In order to feel good about things, the things that you inflow, you have got to flow things out, and it doesn't have to be money for something else, it can be anything, you know. And it's basically that is what is called exchange.

And what happens is that you have got to keep this pretty much balanced in order to be ethical as a being, because if you just take something without giving anything for it, that's what we call in Scientology "criminal exchange". In fact, parents teach their children to be criminals by giving, giving, giving, and the kids expect to get everything and give nothing in return, and to take and take and take without giving is, in my eyes, criminal.

Q. Does exchange go on on more than one dynamic?

A. Yes, it does.

Q. How about the result of Scientology services in your view, your opinion, what you got out of it, did these help other dynamics?

A. Oh, yes, because I got Scientology auditing and I got the training. I then turned around and became more responsible and became a Girl Scout leader and flowed into the community, my help. It just—the better you

become, the more able you become, the more responsible you become, the more you flow out again to things like your job, your whatever.

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TESTIMONY OF RICHARD HERMANN

[207]

* * * *

Q. All right. Are you a Scientologist?

A. Yes.

Q. And for how long have you been a Scientologist?

A. About eight years.

Q. In your own words, what is Scientology?

A. It is a religion that believes that there is an immortal spirit that is basically good, and through various lives and bodies that it has occupied, has unfortunately encountered certain situations which caused it to come up with destructive solutions to the problems that it was faced with, and which caused it to be occluded and caused it to restrain itself and do various unwanted acts. And the Church of Scientology believes that there are certain processes that can assist the spirit in unburdening itself and becoming a healthy, integrated, happy and more productive entity.

Q. Did you make payments to any Scientology organization in 1975?

A. Yes.

Q. Do you recall how much?

A. $4,785.

Q. Did you deduct that amount on your 1975 income tax return?

A. No, I did not.

[208] Q. Did you deduct some portion of that on your 1975 income tax return?

A. Yes.

Q. Was any of the payments that you made for books, E-meters or other tangible items?

A. No.

Q. Had you in years previous to 1975 purchased books, E-meters or other tangible items from the church?

A. Yes.

Q. Did you deduct those on your earlier returns?

A. No.

Q. Why not?

A. Well, I didn't feel that anything that I could resell or possess would legitimately be deductible.

Q. Why did you make your payments to a Scientology church in 1975?

A. Because I wished to support the aims and goals of my church. I felt that they were very constructive to the society.

Q. What were the aims and goals of the church, as you understood it at the time that you made these payments?

A. To help create a world at peace, and assist in eradicating crime and insanity.

Q. Now, at the time that you made these particular payments, did you expect to participate in specific religious [209] services?

A. Yes, I did.

Q. I am going to show the witness Exhibit S, as in Sam. My apologies. In his stipulated facts, it is Exhibit I. There is an equally bad left side.

I am going to show you an exhibit that has been marked Exhibit I and ask you if you are familiar with that?

A. Yes, I am.

Q. What is it?

A. This is the bridge.

Q. Can you point out on the bridge, that is Exhibit I, what specific services you expected to receive?

A. Class 0 through 9.

Q. That would all be on the left hand side of this exhibit?

A. Yes.

Q. The right hand side is auditing, the left hand side is training.

A. Yes.

Q. Were you intending to become a professional auditor, make money at that?

A. No, I didn't have any intention of doing so.

Q. Why would you be expecting to take training which would make you an auditor if you didn't expect to make money from it?

[210] A. My prior religious tradition is Jewish and I had always been trained, and believed that one received enlightenment from, directly from the scriptures and the word of God. And so that prompted me to, you know, want to know about it for myself. Plus, on these courses, I would co-audit anyway and receive the, what is on the right, also.

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TESTIMONY OF DAVID FORBES MAYNARD

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[255] Q. All right. Were any of the amounts that you deducted in 1977 for books, E-meters or other tangible items?

A. No.

A. No, they weren't.

Q. Had you previously purchased books or E-meters or any tangible items from the church?

A. Yes, I had.

Q. And did you deduct those in any year?

A. No.

Q. Are you a Scientologist?

[256] A. Yes, I am.

Q. And for how long have you been one?

A. Since 1976.

Q. Had you previously been in another religion?

A. Yes, I had.

Q. And what was that?

A. The Episcopal.

Q. What, in you own words, is Scientology?

A. Scientology is a realigion that concerns itself with the rehabilitation of a Thetan. The Thetan is basically good but through overts of its past, it—

Q. Overts. You just used a word I didn't understand. Would you please—

A. Okay. An overt would be an act, whether it is committed by the individual to another person, or from another person to that Thetan, or an act from other Thetans to other Thetans, or even an act to yourself, which hurts the Thetan or causes his awareness to be dimished.

Q. Okay. You were saying through overts—and please go on.

A. So the Thetan has had overts against him which has caused him not to be fully aware of his own Theta abilities. Kind of, in the point where we are today where we actually think we are our bodies and that life starts at conception, and when one dies, maybe that's it. But there [257] is no real thinking of what happens before birth and what happens after death.

So we are at the point today where we simply think we are in this time. Now, Scientology, at least for me, has increased that awareness and takes you to a point, you look at the overts, or these things that have happened and that are hurting or reducing your abilities, and one goes back and looks at these things that have happened, and many of the things have happened before this lifetime.

And by going and actually through the counselings of the church, one becomes more aware of the Thetan you are.

Q. All right. Could you describe generally the nature of the Scientology services in which you have participated?

A. Yes. The Comm Course, Life Repair, HQS, Hubbard Qualified Scientologist, the HSDC, ARC Straightwire Auditing, the Co-Audit for the Drug Rundown.

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[259] Q. And the HSDC?

A. The Hubbard Standard Dianetics Course is where you will learn how to operate the E-meter; you learn the basic terminology of Scientology; why auditing works; what you are actually doing in auditing. You take another person in and start counseling him; he will start counselling you, kind of as a group effort. That's about —

Q. Okay. Now, you used the word counseling. Is what you are learning auditing in the HSDC?

A. Yes.

Q. And is there counseling in the sense of that word in auditing?

A. Not in the auditing cycle itself, no.

Q. Is anything taught in the auditing cycle itself?

A. No. That's—it's all—In the auditing cycle itself it is all self-realization.

Q. Are you given advice by the auditor?

A. No, that is forbidden.

Q. Why did you take the HSDC?

A. I wanted to help myself, I wanted to help others.

Q. Did you intend to make money off of becoming an auditor?

A. No.

Q. Now, on the auditing side of the chart, what is this Drug Rundown? What happens there?

[260] A. A Thetan has a mind and he has a body, and what has happened is that with the person feeling that he is a body, he will often take a—let's say, this concerns an illness that is brought on by the Thetan himself. When the person takes a drug or something, it causes a dependency, and there is usually a reason why he is taking that drug which won't be solved by taking the drug. Take, you know, whatever, heroin or something.

So through this auditing cycle a Thetan kinds of finds the real reason why he is taking the drug, and once he has found the reason, he is able to make the correc-

tion of this inadequacy he feels because he is taking the drug or for whatever reason the person is taking the drug.

Q. All right. Now, why did you pay money to the Church of Scientology in 1976 and 1977?

A. First, well, the church needed the money. They were expanding, they were—they had just moved into a YMCA; they were redoing it. We were going to get a new course room for we were just getting ready—They were just kind of getting—They had kind of outgrown the section they were in. So basically, to support my church.

Q. Did you know generally what the purposes and goals of the church were at the time that you made these payments?

A. Yes.

Q. What were they, or what was your understanding of it?

[261] A. Basically it's to make people aware that they are a Thetan. And with that realization, many of the evils of today like war and crime and all the other problems we are having in the world today, if people realized that they were Thetans, would end.

Q. What benefits did you receive from the auditing and this training?

A. One, I became much more aware of myself as a Thetan. I realized that the consequences of what I was today, that it did have a consequence on not only my further lifetime, because it was not only this lifetime, but it was many, many, many more lifetimes to live. That it would help mankind. That it would help just in general the—all other things and the world in general.

Q. Why did you deduct the amount that you did?

A. Because as I read the tax law of that year they were deductible.

Q. Now, when you say you read the tax law, what did you do?

A. Well, when I got my income tax form, the books that come with it, that come in the mail, that's what

I read. So when I filled out each line as it went, and it got to contributions, the book said that the contributions I made to the church were tax deductible.

Q. All right. When you first got involved in [262[Scientology, did you understand that it was a religion?

A. Yes, I did.

Q. Mr. Maynard, have you ever attended—Well, first of all, do you know what a tax protestor is?

A. Yes, I do.

Q. Give us your definition of what a tax protestor is?

THE COURT: Do you want me to give him any?

THE WITNESS: My understanding of it is one who refuses to pay any taxes. I think that is based on, whatever, that our money isn't worth anything, therefore, they can't tax us money, or that that something to do with the Magna Carta or the Constitution or something.

Q. Okay. Have you ever attended a meeting of tax protestors?

A. No.

Q. Or a lecture by a tax protestor?

A. No.

Q. Did you express to the Internal Revenue agent who audited your return that you were a protestor?

A. No.

Q. Are you a protestor?

A. No.

Q. I am going to show you Exhibit 34. Do you see down on the bottom of Exhibit 34, "potential protestor"?

A. Yes.

[263] Q. You have seen that in my office?

A. Yes, I have.

Q. Do you have any idea why that is there?

A. No, I don't.

Q. Did you discuss anything about protesting to the auditor?

A. No.

Q. And are you in fact a protestor?
A. No.
Q. Do you pay taxes every year?
A. Yes.
MR. HARRIS: No further questions.
MR. KAMMAN: Thank you, Your Honor. May I approach the witness and hand the witness Exhibits C through M?
THE COURT: Yes, indeed.

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TESTIMONY OF DR. THOMAS LOVE

[292] Q Are you able to relate auditing to any other religious traditions?
[293] A Yes, I think so. In particular it seems to me that auditing reflects the sort of practices you see in the East, I would think particularly for example of Hinduism and Buddhism. Let me explain that if I may. The language of the Church of Scientology is somewhat new to me, but the ideas that are there are somewhat familiar to me. The word Thetan, for example, is a new word to me, but the understanding that Thetan is talked about in say the Hindu tradition would be an Ataman and there you have the notion of a soul that perdures throughout all existence and is constantly taking on new forms—reincarnation, rebirth. So you have in the Eastern tradition an emphasis upon understanding of your innermost self, or the innermost soul, or the Ataman, A-T-A-M-A-N. And this is the sort of understanding of life that can never be reduced just say to the body or to the mind. It's always a reality that somehow underlies these and is behind these. The body would be a mask, a persona, some sort of a projection at most through which the soul might be in some sense either exhibited or known indirectly.

In that particular tradition one uses rather strict disciplines to attain this higher awareness of the soul

and it's existence. For example a yogi would practice very careful disciplines of breath control, body postures, asangas, and other things that would assist him such as diet to help him to attain the insight of this innermost reality [294] which I'll now simply always refer to as Ataman.

In the Upanishads, for example, the Hindu tradition, this is fundamental search that one is always undertaking. The attempt to discover one's Ataman which is finally identified with the external reality of the universe called Brahman, and those two become the understanding of all of life.

In Therevada Buddhism, for example, you have a similar kind of phenomenon. You have there a strict adherence to a set of rules, the 227 Patimokha they're called, which primarily emphasize a rigid morality, a rigid meditation schedule, with the expectation of gaining an understanding or a rapturous awareness of what would be called an enlightenment Bodhi experience in that tradition. So on the basis of morality and meditation one attains this higher wisdom which can be wisdom of other persons, wisdom of other universes, wisdom of other abodes. That's a very common way of talking in these Eastern traditions.

Quite in conflict, I might add, with Western religious thought which sometimes makes it difficult for—I think—the Western approach to recognize and understand what's going on there. We're much more dualistic in our origins and in our seeing of what might be called an Ataman or Bodhi or the rebirth process.

So there as far as I can see would be the major root [295] ideas of what's going on in the Church of Scientology today. I could extend it to Mahayana Buddhism and the various schools, but I think that's illustrative. There you find the individual, Scientology says Thetan, Hinduism says Ataman, Therevada Buddhism says configuration of the Skandas, Peryan Buddhism would say the experience of a Meda, Mahayana Buddhism tradi-

tionally would say Bodhi or Budhi or Budihod. The notion in say Zen Buddhism would be referred to as Satori, this flash or this release or this freedom or this enlightment or this beyond the senses.

So you have various ways of talking about this in Eastern traditions that are quite in conflict I think with the traditional approaches in the Western world. And I see this as quite corrolatable with Scientology's way of talking.

You also see the impact on society in a different sense. In the West there has tended to be out of the biblical heritage in a sense some sort of antinomy between the world and man, like in the traditions of the Hebrew bible, the Old Testament chapters one and two you have man being given dominion over the world, over the animals. That's not a notion in Eastern religious thought in Hinduism or in Buddhism. You don't have dominion over it, you're seeking some sort of coalescence with it or union with it. You're seeking some sort of closeness with it or joining the harmony, the notion of omn in Hinduism or the notion of dharma in [296] Hinduism is trying to understand the natural law or the universe and join with that in some sort of cooperative and synergistic way rather than seeing the antinomy that might be developed there in the West.

Q Thank you. From your examination of auditing and the Scientology religion, are you able to relate anything you find there to these concepts—these Eastern concepts you've been mentioning about harmony? I'm not sure I'm repeating this exactly right, but union or harmony with the universe. Is that the idea there in the East?

A Well, the East typically looks for some sort of union, some might say absorption, or oneness of an ultimate source or reality or power, even though Eastern religious traditions may insist upon some sort of individual ataman continuing forever there is this constant implication that somehow this is absorbed in or united with

the ultimate Godhead. Whereas here in the West, that's not the major focus. Western mysticism even doesn't emphasize that largely as for example in the writings of Eckhart or St. John of the Cross or St. Theresa. You don't have that basic notion of complete identity or union. You're always emphasizing in the West communion or worship or hearing the word, or communicating the word. Where you have a process going on with two distinct kinds of reality rather than this sort of continuing existence that's immortal that goes through [297] various kinds of phasal existence.

So as I see Scientology, there tends to be much more leaning toward the Eastern approach rather than the Western approach.

Q From your examination of auditing did you form an opinion as to whether the auditing benefits solely the individual receiving auditing?

A Whenever I first began to read carefully in the area, I was convinced that that was perhaps the only focus. That the emphasis was upon the individual, the individual attainment of enlightment or awareness or freedom, whatever word that might be used. One word that's often used is self-determinism which makes good sense, and that reflects the Buddhist's notion too as well as the Hindu notion of the self-determining its own existence and can't depend upon say external help as would typically be used in Western though. There's no notion of grace, there's no notion in one Hindu parable of the mother monkey carrying the baby monkey on its back as there would be in Western thought where God is constantly assisting persons to come through some awareness, whether through the Holy Spirit or in some other way.

So the individual clearly is in focus in terms of going through stages of development progressively through an awareness of higher and higher levels of understanding or insight, much like the gnostics might have talked about [298] in certain aspects of Western religious

though. Also beyond that and it came somewhat as a surprise to me when I talked to persons that were being audited, beyond that they believe that this was absolutely beneficial for the world. That their change, their growth, that their enlightenment, their development, created clearly to the betterment of society, of the world, and added as it were stature to the world. Brought the world to a higher awareness.

You can see the reverse of this in Biblical tradition where in a sense the notion of sin scars the whole world and then in Pauline thought the creation is groaning in travail until you have this revelation of God in Christ or Christianity. But all the world is affected either for ill or for good. And in Scientology the major emphasis is upon affecting the world for good by obtaining one's own enlightment and going out and hopefully assisting others to do the same.

Q Is there a parallel to this concept that you've just mentioned here in Eastern traditions?

A Yes, clearly.

Q Can you explain that?

A Yes, the notion of the dharma in Hinduism is precisely that. One has to do one's own sva dharma, that's his own personal acts with regard say to the caste system historically, and then one is also to perform one's own socia dharma. And both of those link together, one goes with the other. One [299] doesn't just do without say performing an act in society for the society's good, but can't do that on the same level unless one practices either devotions or various kinds of yoga. In the bhagavad gita, for example, the way of jinana yoga, the way of wisdom is an attempt constantly to bring oneself to enlightment so that enlightment will benefit the universe, benefit the society, benefit the world.

Rhadda Krisha in his book *The Hindu View of Life* developes this theme very thoroughly. The former president of India trained in England talks about how this view of life is something of benefit not only to the Indian society but the entire world simply by people practicing this sort of dharma—this sva dharma—themselves.

In Mahayana Buddishm you have a classic illustration. There you have parables that are used constantly in this tradition to try to encourage persons to perform actions that will enhance and build up as it were other persons enlightment experiences. It's obligatory I might say upon a bodasofa—not a good word to use in the East—but the bodasofa is expected to show light to all. Out of his own enlightenment he enlightens others. That's the basic theme. So he doesn't as it were, withdraw from the world. He stays in the world and attempts to assist others even though he understands himself to be part of the Buddhahood or part of Buddha nature in itself. All persons in that respect have a Buddhahood within. So to [300] contact that is critical for helping to transform the world and to help the society.

Q Okay. Dr. Love are you familiar with the ways in which churches obtain funds?

A Yes.

Q What is the basis for such familiarity?

A Well, I am a minister, so you have to have some training as a minister. But let me go back historically a little bit. I've always been actively involved in church life. My father was Episcopal, my mother was Methodist. My father didn't attend church, my mother did, so I went to the Methodist church. And through that whole experience as a boy and growing up as a youth, I became aware of the necessity for various kinds of raising of funds for projects in the church. For sending youth to various meetings, et cetera. And when I made up my mind to go into the ministry there was one course, for example, in seminary that I still remember where we were focusing on the different ways of raising funds for churches. And we talked about rural churches and small town or middle town churches and city churches where

the needs would be different and their approaches might be different.

Then whenever I became a minister of education and a pastor of different churches, it became necessary to face this question in a realistic sense. Formerly I'd only [301] sort of looked at it and that had not been my great inclination to study fund raising or anything like that. It seemed sort of beneath me at the time.

What happened in fact was we began having seminars, we'd bring in fund raisers, I remember today how awkward it was to me to even accept the notion of bringing in professional fundraisers in a church because that had not seemed the proper way to go in my own background and training.

So we'd have seminars and fund raisers and we'd have people in who had been doing this not only in other institutional groups but in various churches. The conference which is what the minister is a part of, I don't really belong to a local church, I belong to a conference —Southern California Conference, for example—has various kinds of institutes or seminars that help people to understand how to raise funds in basic churches.

So that would be one way. Other ways would just be in communication with other people. Like we'd have associations of ministers, rabbis and priests in various areas. Say when I was in Dallas or when I was in Missouri or when I was in Topeka or in various other churches that I've been in. You go to these ministerial associations and you often share ideas about how you raise funds or how you meet the needs of a particular church.

Q Please tell us some of the different ways in which [302] churches obtain funds.

A I guess traditionally we think of tithing and that still goes on in a few of the religious orders today. I guess the Mormons would be the most known in that area. Where it would be a required expected thing to do. Most churches don't have too much success with tithing

it's been my experience. The Methodists certainly don't. We recommend it, but that's about as far as it goes.

Plate offerings clearly would be a very common way of raising funds. Either passing the plate or the basket in a church service, which makes sense if you require communion worship as for example in Roman Catholicism and my particular tradition. Plates also are typically placed at the door instead of passing them along the pews. You can put your offering in as you leave or as you come in.

Churches often have pledging systems now. There you have the development of envelopes and mailings and maybe teams going out two by two as I've often done to contact persons in the congregation and to make recommendations as to what they should either give or what they might give for the regular, ongoing program of the church.

You have various special projects throughout a given year, such as building funds. That would not typically be involved in your normal giving. That would be a special event. So you'll do various things to encourage building [303] funds. One of the practices in America as I understand it from one of my professor colleagues was one of the basis uses of pew rentals was that at one time in the East. I've never gone into that in any great detail. But you'd in a sense subscribe the pews and that would give you a way to build the church.

You also would hae in this particular area of building funds, you'd have hospitals or orphanages or adopting children from disaster areas, so these are all special projects that would be over and above the normal giving.

Some religious groups, I'm thinking now in particular of the Buddhists and the Jewish, will have membership fees simply to join that particular temple, synagoge, or church. Some will have what's called a fixed fee. Some will have like a minimum fee, or some will have a fair share apportionment as for example in Judaism.

Other ways of obtaining funds would be by renting seats, like on high holidays or holy days in Judaism. Paying for the seats if one wants to take part in those holidays and is not an affiliated member, one would pay for those seats. So again, that might be done as a fixed set of seats or it might be done as an open seat arrangement, that is you don't reserve a particular seat but rather you just sit in for that particular holiday, say Yom Kippur, but you wouldn't have a fixed seat. But you also have fixed seats in some [304] congregations where the family would be expected to be seated.

In that light also you used to have, and I'm not too clear that any churches in the West have them, there may be some in the East, you would have pew rentals where a person could pay for a pew for a period of time. Historically that was kind an important development in both England and early America. One of the early churches of which I am a part, that is the United Methodist Church, the Free Methodists broke off precisely because they did not want to participate in pew rental. They thought that was beneath them and they thought that was not the proper way to gain funds.

Also you'd have plaques, donative plaques that would be given to raise funds for various things, typically you'd put the plaque either on a pew or on a table or on something. Paraphernalia of a given church, a door, or what have you.

There are many other ways of raising funds, special maybe events like memorial days like at Easter and Christmas or in Buddhism the Founder's Feast where persons would be expected to donate more than would typically just be involved in their regular pledging and tithing.

You have various kinds of social activities that would bring in funds. Bingo games, bazaars, rummage sales, car washes, almost anything that a church or religious group [305] could think of might fall into that category.

So it's a vast array of fund raising activiites that might be looked at.

Q Let me make sure I understand one thing. You mention building funds. I guess that's sort of a purpose for which funds might be raised, but how might a church go about getting funds in order for a building fund?

A Well, typically say in my tradition to start with you would just decide say by a committee in the church along with the pastor, perhaps also in conjunction with the bishop or the conference in my particular tradition, that either you're going to build a new church in a certain area or you're going to expand the church or build an educational wing, or maybe build a hospital or educational institution or what have you. Then you decide what amount of money will be needed to do that, and then you would begin soliciting through the various churches if it's a conference wide activity or locally if it's a local situation, such as an educational unit, for that particular project. Otherwise that's quite separate from the normal giving.

This would then be an extra expectation on the part of the participants.

Q Are there churches which solicit fixed contributions for religious services?

A Yes, I mentioned some in my general list before. [306] Q Yes, are there any other examples you can think of?

A Well, tithing would be one illustration. Tithing would be a percentage basis, but it's still a fixed basis, in the sense it would be an expected percentile basis of one's income. Not either gross or more typically net. The membership seats are fixed, otherwise if you're going to come into this church—I don't mean seats, membership fees. If you're going to come into this church, you're expected to pay a membership and I said, for example, in Judaic tradition fundamentally there are two approaches to that. One's a minimum fee which may be an individual pays or more typically a family would pay. The same thing is true in Pure Land, one form

of Mahayana Buddhism, say for example in Southern California. You pay a fee if you're an individual, you pay a higher fee if you're a family.

Then there are also fees for maybe what now is called education, but more traditionally would be called like the study of Torah or the preparation for reading and understanding Torah. You have fees for certain kinds of programs that would be generated by a given church. The seat fees are also fixed even though they vary from congregation to congregation. The old pew rental fees would be the same thing. They were fixed but they would vary from a given church to another given church.

[307] In terms of customs which I don't think can be completely ignored, a lot of customs are essentially the same thing as a price list as you can call a church secretary or temple secretary and ask how much it is for this particular service, and the church or temple organization can tell you even though it's not published as part of the policy or structure of the given church. It's the custom that that would be paid.

In my tradition, for example, a minister might be paid and it can either go to the church or to the minister or to the minister's wife depending upon the individual and depending upon the congregation, to be paid a fee perhaps for marriages or for funerals, or in the Episcopal church what's called the stole fees which are expected but are not demanded or not required. But it's certainly part of the custom to do so.

In the mass or the Eucharist, a better term in the Greek than in the Latin, the notion of the grace well being rather than the miss of the dismissal, you have a high mass and a low mass which would be of different costs in terms of what's expected in that particular mass. There are other aspects but you have various kinds of structures that are both clear, fixed, and you have structures that are customary that might not be published as such. But would be known by the internal body.

[308] Q Back to tithing—do you know which denominations, if any in the United States, practice tithing?

A I suppose the clearest illustration today would be the Mormons. The Mormons see this as a clear expectation and, for example, if a person does not tithe a person will not be given what's called a temple admit.

Q What is that?

A It's a direct relationship. If you don't tithe you're not a Mormon in good standing, and you may not be admitted to the temple services which is critical in that tradition because that's what's required for one to take part in that tradition as a full communicant or participant. So if you're not given a temple admit that means you can't go to the temple and take advantages of the services. It's a direct corrolation to whether or not one is in proper standing as to the tithe.

The Free Methodists also tithe, but I haven't kept upon them for a number of years.

Q Do members of churches, parishoners of churches who contribute monies to their churches, receive or expect to receive something in return?

MR. KAMMAN: Objection, Your Honor. That's calls for speculation on the part of the witness. Calls for the witness to take a look into other people's minds, people he does not know. Calls for an opinion of the witness to form an [309] opinion as to what other people think.

THE COURT: Yes, Mr. Taussig?

MR. TAUSSIG: Your Honor, as I understand the federal rule, expert witnesses are entitled to testify in terms of opinion. I can rephrase the question.

THE COURT: You can get what you want by a little rephrasing.

MR. TAUSSIG: Surely.

BY MR. TAUSSIG:

Q Dr. Love, based upon your background and your training and your experience, do you have an opinion as to whether parishoners of churches who contribute to

their churches receive or expect to receive something in return for their contributions?

A Yes.

Q Okay, can you explain that?

A Well, I just indicated one entitlement with regard to Mormonism where they expect to receive the benefit of that religious tradition and in precise terms they expect to be admitted to the temple hall so they can take part in the highest form of worship in that tradition. That's one kind of illustration.

I think also if you talk to people in these traditions, and if you happen to be a minister in one of those traditions and have lived in those traditions throughout your [310] life, then there are many kinds of expectancies that are involved. Persons will often say and often testify to the fact in public and in churches that they have received certain benefits because they have done certain things.

In the Eastern tradition, I think for example in America just to limit it to America right now, in Nichiren Soshu Buddhism, a religion which I've studied to some extent a sect form of Mahayana Buddhism on the California scene, typically you can give a donation and you can chant or repeat formula—nom myo reghi kyo—and perhaps you also repeat the name of Amidaha Butsa, Amitabna Amino Buddso Butsu. These are just formulas that are used. It's a form of chanting, a repetition of a name, that's deemed to be essentially clearly related to a benefit. For example, if you do this you're supposed to get what you desire or what you wish. Many students talk this way on campuses and I've been to a number of Nichiren Shoshu meetings and have listened to their testimonials and have observed essentially what they take to be evidence of this particular fact.

In my tradition churches will often say that if you give and if you participate, you will benefit directly. You will benefit in terms of jobs, or perhaps health, or in overcoming personal problems like drinking or alcohol, various kinds of things are said in these traditions in relation to participation in that particular religion or [311] tradition.

THE COURT: Doctor, in the Mormon religion—have you spent a great deal of time studying the Mormon religion?

THE WITNESS: Not a great deal, Your Honor.

THE COURT: Well, with respect to this temple admit, you testified that it's required that you tithe in order to get a temple admit, is that the right phrase?

THE WITNESS: Yes.

THE COURT: Do you know whether or not in making a determination about the tithing whether or not any consideration is given to ability to pay? Or is it a fixed percent or what? How is that determined?

THE WITNESS: It's intended to be a fixed percent, but there would be variations with regard to a person who had say lost a job and could no longer pay, and tends to be a person in good standing. There are bound to be some qualifications allowed for that sort of situation.

THE COURT: I mean I've heard the figure ten percent as the usual figure, but that is negotiable so to speak?

THE WITNESS: I think it might be in some instances. That's not the doctrine. That's not the basic teaching I would pick up out of the readings I've done, but again on the pragmatic level I'm sure there might be some negotiation. The temples that I'm most familiar with in Northridge and I've been to Salt Lake City a few times, and the persons that [312] that I've talked to there want to say no that's fixed, although I'm sure there are qualifications. Doctrinally it's fixed in that tradition. Pragmatically it may not be as I understand it.

THE COURT: When you say fixed, you mean fixed you must tithe with the amount left up in the air.

THE WITNESS: Originally in England there used to be the notion that you'd make an offering and it later became a tithe. And then the tithe tied to the land and

to the crops, and so basically it was tied to corn, wheat, and barley, and so since the crop wasn't produced the same every year it fluctuated quite a bit.

So then there came about in the legislation in 1918 that there'd be what's called a composition which would replace the fluctuating tithe and you'd have a set fee, which is going to be produced from that land which became similar to the endowment programs later. Then in 1925 that was done away with. And then in 1963 entirely done away with by statute.

But you do have this problem of fluctuation within a range of a percentage.

THE COURT: With the difference in the Mormons you make a distinction there that you say you can't get in the temple. I mean in most other religions if you don't live up to your pledge you may get a dirty look from the minister or [313] some of the parishoners but they won't keep you out of the building.

THE WITNESS: There is that notion in certain traditions such as Roman Catholic that if you haven't confessed at least once a year you're not supposed to be able to take part in mass. But as you know that also varies quite a bit depending on the congregation or the parish. But the doctrine was originally that you had to go to mass, or the notion in early Methodism and also in Episcopalian churches that if you were not a person in good standing that you couldn't stay past a certain stage of the services. If you had not been baptized you would not be expected to be allowed to observe the Eucharist because that was a formality that was reserved only for persons in full standing.

THE COURT: Well, you couldn't take communion.

THE WITNESS: Yes.

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[314] Q Why is it that study can be a form of religious observance?

A Well, I think because of the focus upon the sacred text originally, for example—again, let me move East

and West just to give an illustration. In the East, for example, the study of the veda was a required stage, studentship was a required stage for the leveling up of life into the next rebirth. If one did not go through studentship then one couldn't go through the other stages properly. And even if he did go through the other stages his next rebirth would not be as high as it might have been. So studentship was expected in the study of the veda is what it means to be a student. You go join a master, you go as it were and study veda. You don't do it on your own, you do it with someone that leads you into this and typically it would be one to one. A guru would teach the individual. It could be one to two or three, but it was at least one to one typically.

In Therevada Buddhism, the study of the teaching of the Buddha are absolutely crucial. You have to know the four noble truths, you'd have to know the eight-fold path, you have to understand how this applies to your own life, and [315] you'd have to act on it. So you're being in a sense trained and disciplined in accord with the sacred texts or in accord with the text that they would take to be crucial. In the west you'd find a somewhat different approach depending upon your tradition. In Roman Catholicism, for example, and certain traditions that came more directly out of that heritage, not in the Protestant Reformation, but like the Anglican and my own tradition the Methodists, the emphasis was not so much in the Roman Catholic tradition upon studying the text, in fact it was kept from the people in many instances. The emphasis was upon authority and tradition. The Protestant reformers by contrast, I'm thinking now of Luther and Calvin foremostly, the Protestant reformers by contrast would shout sola scriptura. Otherwise, a return to the scriptures. The scriptures alone are sufficient for faith and a relationship to God. So the emphasis became on studying the scriptures. Luther went so far as to say anyone can understand the scriptures all you have to do is read them, but he happened to have taught them for 20 years and maybe he had

a little bit better understanding than most of us when we try to go to those texts.

In the Calvin tradition you quickly got more of an emphasis on discipline and not just sola scriptura alone. And also you did in the Lutheran tradition because Luther became very concerned with what he called die schwermer, those buzzing [316] bees about his head which where the Anabaptists and other such groups as that at the time who also shouted sola scriptura. By that they meant you had to read and study and find in the scriptures a devotional way of understanding and knowing God. Why? Because the word of God is deemed to be somehow coming through the words of the scriptures. So without the scriptures you can't hear the word of God. The minister preaches the word of God, he gets it from the scriptures, he's inspired as it were through the scriptures. So the reading of the scriptures would be a devotional act. It would be a necessary procedure in those traditions that emphasize the word of God as found in the scriptures. In other traditions like the Yeshiva, you see the emphasis on the study of Torah. In Judaic tradition typically the rabbi is seen not as a priest or as someone who leads worship. He's seen as a teacher. What does he teach? He teaches Torah. How do you learn Torah? You learn by reading with the rabbi. You'll get pictures and art works and you'll get the notion that even after this life you're reading Torah with the rabbi or reading Torah with God forever. So the reading of Torah itself is a meritorious—I use that word loosely—act. It's an efficacious act.

The reading of scriptures is something that's required in order for one to hear the word of God. Because you don't get the word of God outside. You get it through [317] this tradition or this line or these sacred scriptures that were revealed or inspired, depending on one's tradition.

* * * *

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[LOGO]

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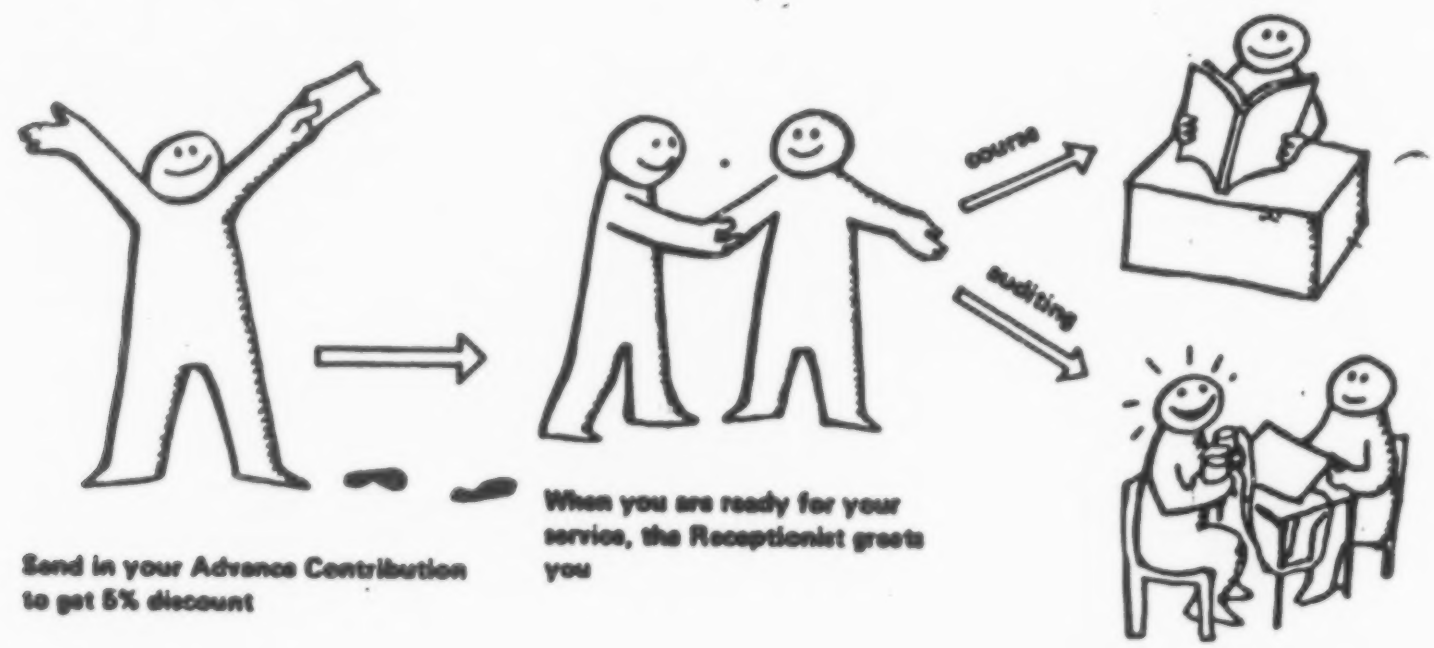

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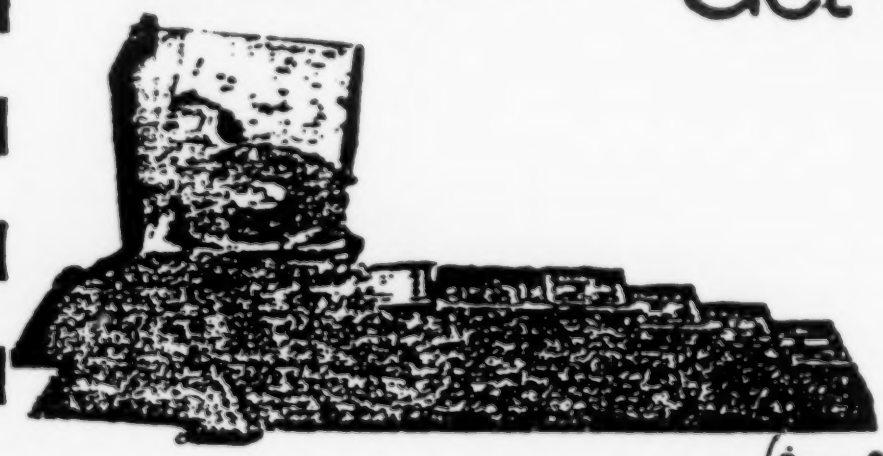

(Page 8.)

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Free Auditing Check

- If you feel there is something holding up your spiritual progress and expansion through auditing,
- If you feel there is any barrier to your attainment of the full gains of auditing,
- If you have an incomplete auditing level or action,

The Director of Validity in the Qualifications Division will be pleased to arrange a Free Auditing Check for you. This is a simple check, done on a meter by an expert auditor, to help you find the exact source of any difficulty you may have experienced.

You'll feel *much* happier, ready to resume your progress towards higher levels of spiritual ability and awareness through Scientology auditing.

Contact the Receptionist. Tell her you want a Free Auditing Check.

No Appointment Necessary

BEST AVAILABLE COPY

HEAD OFFICE 9111 WILSHIRE BOULEVARD BEVERLY HILLS, CALIFORNIA 90213

1-0125364-6 WCK OCT 30, 1975

PAY ●●●●●●●300DOLLARS AND 00CENTS $ ●●●●300.00●

TO THE RICHARD MARK HERMANN

ORDER OR FREDA HERMANN

OF VOID VOID NOT NEGOTIABLE

Down payment on vital information rundown, total price $500; balance to be added on to balance of class IX package. Next payment of $10c due Nov. '75

UNITED CALIFORNIA BANK

CUSTOMER COPY

16-20
1220

GIBRALTAR SAVINGS and Loan Association
HEAD OFFICE 9111 WILSHIRE BOULEVARD BEVERLY HILLS, CALIFORNIA 90213

14- 643516

1-0125364-6 WCK MAR 26, 1975

PAY ●●●●●●●475DOLLARS AND 00CENTS $ ●●●●●475.00●

TO THE RICHARD MARK HERMANN

ORDER OR FREDA HERMANN

Ex-Dr
Package Pay-off

NOT NEGOTIABLE

OF VOID VOID

UNITED CALIFORNIA BANK

CUSTOMER COPY

16-20
1220

GIBRALTAR SAVINGS and Loan Association
HEAD OFFICE 9111 WILSHIRE BOULEVARD BEVERLY HILLS, CALIFORNIA 90213

14- 436677

PAY 0125364-6 WCK JAN 06, 1975 $

●●●●●●●900DOLLARS AND 00CENTS ●●●●●900.00●

TO THE RICHARD MARK HERMANN

ORDER OR FREDA HERMANN

Ex-Dr
Package

NOT NEGOTIABLE

OF VOID VOID

UNITED CALIFORNIA BANK

CUSTOMER COPY

J. Exh. 5E

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ASHO FOUNDATION

THE CENTER OF UPPER LEVEL TRAINING AND PROCESSING FOR THE WORKING SCIENTOLOGIST

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA
American Saint Hill Organization Foundation, 2723 West Temple Street
Los Angeles, California 90026 Telephone 213 380-0710

L. Ron Hubbard
Founder

RICHARD HERMANN
22307 KENT AVE #34
L.A. CAL. 90505
323-5770

TREASURY DIVISION
STATEMENT OF ACCOUNT

DATE	INVOICE NO. & DESCRIPTION	AMOUNT USED	AMOUNT PAID	AMOUNT ACCOUNT
DEC 15	16837 PAID STAFF COURSE	----	121 25	121 25
JAN 15	15552 PAID XDN CLASS	----	400 00	521 25
FEB 15	22600 PAID XDN	----	475 00	3086
MAR 15	[illegible] PAID CC II [illegible]	[illegible]	1000 00	3086
APR 15	23101 PAID [illegible]	----	1500 00	4586
JUN 15	[illegible] PAID [illegible]	----	[illegible]	[illegible]
JUL 15	27115 PAID CLASS II DEC	----	1000 00	5586
AUG 15	29116 PAID CLASS II ADULT	----	100 00	5886
SEP 15	32257 PAID CLASS IV	----	100 00	5986
OCT 15	34521 PAID CLASS IV	----	100 00	6086
NOV 15	36022 PAID CLASS IV INC FD	----	400 00	6486
NOV 15	35421 PAID [illegible]	----	100 00	6586
DEC 15	[illegible] PAID CLASS IV	----	100 00	6686
MAR 16	[illegible] PAID CLASS IV	----	100 00	6786
MAY 16	42416 CLASS IV pkg	----	200 00	6886

Exh A

BEST AVAILABLE COPY

Get the DATA of the Upper Level Training through

Triple Flow* Class IX

at

ASKO Foundation

"The moment a persons starts training, he's already walking a track which is higher than the track to Clear."

L. Ron Hubbard

Be Able to CRACK Any Case

The phenomenal data at the Upper Level Training Bridge is available to you now at ASKO Foundation. You can move quickly and easily up to Class IX here and become one of the most highly trained beings on this planet. The training route is the route for all people who really want to help their fellow man and with Ron's data from these courses you will be completely able to help. You gain the certainty and ability to apply Ron's tech to any case and you apply the data to 100% standard results.

The Saint Hill Special Briefing Course is Ron's special course for you. The materials covered include the tapes, books and bulletins from 1965 to 1966 and with this data you will become a really professional auditor. On the course you go through the development of the tech just as Ron did when he developed the materials and you gain a thorough understanding of the basics of Scientology. Following the Briefing Course you will do the Class VI Internship and really put the materials from the Briefing Course to work by applying them to others and increasing your certainty of them as you apply them. You become a fearless Class VI auditor. Upon completion of the Class VI Internship you do the Class VI C/S Course and here you gain the ability to extend your reach as an auditor and apply the materials of the Briefing Course to others and make sure that they apply the data standardly to their pcs. You will have the ability to apply the tech to many different sessions all at one time as you C/S for other auditors who are working under you.

The Class VII Internship follows the Briefing Course and on it you learn the precision of auditing that is required to be a POWER Auditor. You get the data behind the Power Processes and actually audit the processes and do the interning until you are completely certain of your ability to audit with the precision required for Power. Even if you don't plan to audit the Power Processes, the data is very valuable as you learn the precision of skill that will greatly increase your results even on the lower level auditing. Following the Class VII Internship you do the Class VII C/S Course and learn to apply the data as a Case Supervisor. This completes the data of Class VII on all three flows.

Class VIII follows the Class VII Internship and on the Class VIII Course you will learn the secrets of the universe that only Class VIIIs are given. The course covers the exact nature of a thetan, how the mind works, exactly who Ron is and why he's here, why the tech was developed, and much, much more. On this course there are 19 confidential tapes that Ron gave to the original Class VIII Course on Flag. With this data you are armed with an understanding that is so complete that standard tech is a simple matter and you can produce it with ease. The materials of the Class VIII Course are strictly confidential as are the materials on the Class VII Internship and C/S Course. Following the Class VIII Course is the Class VIII Internship and you apply the data and polish your skill as a Class VIII. The Class VIII C/S Course is then done and you learn to apply the data of standard tech as a Case Supervisor.

The final step of your training at ASKO Foundation is the Class IX Course. The Class VIII Course covered the materials that were developed from 1966 to 1968 and the Class IX Course takes you from 1968 to 1971 and aligns the developments from that period of time. On it you learn the basics behind interiorization and exteriorization, you see the confidential bulletins and folders personally C/Sed by Ron that show how he developed the tech on them, and much more confidential data behind many of the recent rundowns that have been released. Following the Class IX Course you do the Class IX Internship and gain the ability to apply with certainty all the materials covered on the Class IX Course. The Class IX C/S Course has not been released.

Get the data contained on these courses and become one of the highest trained auditors on the planet.

The Upper Level Training Courses are available in several different packages which represent great savings for you. The following is a list of the packages, what they include, the donation for the package and the donation if not in a package. Package donations include the 5% discount for pre-payment.

SHSBC TRIPLE FLOW PACKAGE-contains the Briefing Course, Class VI Internship and Class VI C/S Course. Package Donation: $1,710.00; Full Donation without package: $3,075.00.

SHSBC-POWER TRIPLE FLOW PACKAGE-contains the Briefing Course, Power Processing, Class VI Internship and Class VI C/S Course. Package Donation: $2,310.00; Full Donation without package: $5,660.00.

FULL TRIPLE FLOW TRAINING PACKAGE-contains the Briefing Course, Class VII, VIII and IX and all Internships and C/S Courses. Package Donation: $7,600.25; Full Donation without package: $20,600.00.

FULL TRIPLE FLOW TRAINING PACKAGE (with POWER PROCESSING)-contains the Briefing Course, Power Processing, Class VII, VIII and IX and all Internships and C/S Courses. Package Donation: $7,600.25; Full Donation without package: $32,379.00.

* Triple Flow Training-See questions on back for complete definition.

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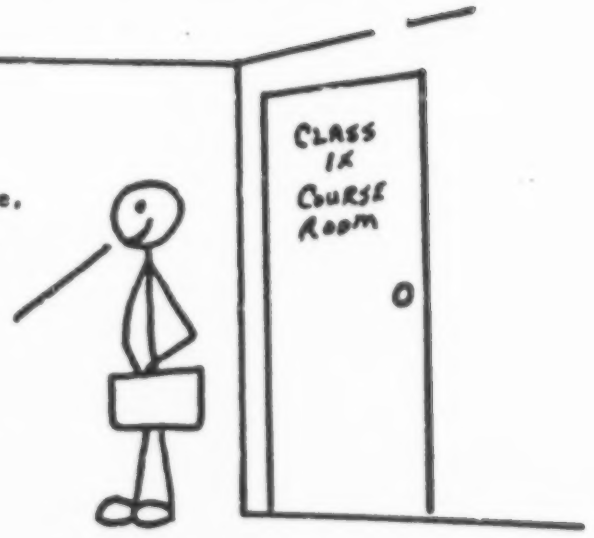
Exh. M

BEST AVAILABLE COPY

What have you gained since you became a triple flow trained Class IX?

I can crack any case, even the "difficult" ones with ease and apply the data flublessly with 100% standard results. I am basically certain of my ability as an Auditor and as a Case Supervisor.



QUESTION: Who can be a Class IX?
ANSWER: Anyone who meets the necessary training and/or case requirements.

QUESTION: What are the necessary prerequisites for the courses?
ANSWER: For the Upper Level Training Bridge this is what they are:

THE SAINT HILL SPECIAL BRIEFING COURSE (Classes V and VI)-Class IV Auditor or the state of Clear or HPA/HCA (Hubbard Professional Auditor/Hubbard Certified Auditor) if certified prior to 1964, Hubbard Dianetic Counselor and the Primary Rundown. The HDC can be done here at ASHO Foundation prior to the Briefing Course if not already done. The Primary Rundown is offered free of charge to students on the Briefing Course if not already done and is completed just prior to starting the Briefing Course. A graduate of the Briefing Course is awarded Provisional Class VI Auditor certification.
CLASS VI INTERNSHIP-Provisional Class VI Auditor. The graduate of the Class VI Internship is awarded Permanent Class VI Auditor certification.
CLASS VI C/S Course-Permanent Class VI Auditor. The graduate of the Class VI C/S Course is awarded certification as a Class VI C/S.

CLASS VII INTERNSHIP-Permanent Class VI Auditor certification, Primary Rundown. The Class VII Internship is the course and internship combined. Upon graduation from the Class VII Internship you are awarded Permanent Class VII certification.
CLASS VII C/S COURSE-Permanent Class VII Auditor and the Class VI C/S Course. Upon graduation you are awarded certification as a Class VII C/S.

CLASS VIII COURSE-Class VII Auditor and OT II and doing well on OT III, Primary Rundown, and Hubbard Dianetic Counselor. The graduate of the Class VIII Course is awarded Provisional Class VIII certification.
CLASS VIII INTERNSHIP-Provisional Class VIII Auditor. The graduate of the Class VIII Internship is awarded Permanent Class VIII Auditor certification.
CLASS VIII C/S Course-Permanent Class VIII Auditor, the Class VI C/S Course and the Class VII C/S Course. Upon graduation from the Class VIII C/S Course you will be awarded Class VIII C/S certification.

CLASS IX COURSE-Class VII Auditor certification, Class VIII Auditor certification and the Primary Rundown. Provisional Class IX Auditor certification is awarded upon graduation of the Class IX Course.
CLASS IX INTERNSHIP-Class IX Auditor certification. Upon completion of the Class IX Internship you will be awarded Permanent Class IX Auditor certification.

QUESTION: What exactly do you mean by triple flow training?
ANSWER: That refers to doing all three flows of training which are:
Flow 1-inflow of the data. This you will do on any regular training course. Flow 2-outflow of the data. This you do on an internship as you outflow the data that you learned on the course by applying it to others. Flow 3-cross flow. This is done by becoming a C/S and seeing that others apply the data to others. That is basically what triple flow is.

QUESTION: WOW! The Upper Level Training Bridge is really here to do, isn't it?
ANSWER: Yes, and you can do it here at ASHO Foundation NOW! If you already meet the prerequisites for the courses, come in right away and get fully trained all the way to the highest level of ability in the hemisphere. If you still have some of the prerequisites to finish before you can come in, just write to the Letter Registrar here at ASHO Foundation and he will get you signed up in advance so that when you are ready there are no stops on your being able to just come right in and get on the way.

QUESTION: That sounds great! Now how do I ensure that I actually get there?
ANSWER: The first thing you do is sign up in advance and make sure that the Letter Registrar knows that you plan to go all the way to the top. Then simply start sending in all you can right away so that you get here as soon as possible and when you do get here there will be no stops on your lines.

APPLICATION FORM

✓ I want to be able to handle any case by becoming a Triple Flow Trained Class IX Auditor.

Enclosed is $_____ as all/part (circle one) of my donation for my Upper Level Training through Triple Flow Class IX.

NAME_____PHONE_____

ADDRESS_____

CITY_____STATE_____ZIP_____

TRAINING LEVEL_____PROCESSING LEVEL_____

OCCUPATION_____WORK HOURS_____

BEST AVAILABLE COPY

Exh. O

Achieve the highest level of ability in the hemisphere.

5 6 7 8 & 9

SCIENTOLOGY TRAINING LEVELS EXPLAINED

Contact the Registrar

at your local Church or Mission, or at
The New American Saint Hill Organization
2723 West Temple Street
Los Angeles, California 90026
Phone: (213) 380-0710

Church of Scientology of California
The New American Saint Hill Organization

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You get all the data. Just as Ron developed it.

CLASS 5 AND 6: THE SAINT HILL SPECIAL BRIEFING COURSE

This course was developed and taught by Ron personally to fill the need for higher level training.

On this course, you'll be briefed on all Scientology materials in order from 1948 through 1968. That's a lot. 365 taped lectures.

(continued)

The data learned in order to deliver Dianetics and Grades 0-4 at the local churches are only the bare essentials needed to bring about their results. If it were calculated, a Class 4 Auditor could be said to have learned only about 11% of the vast wealth of technical materials available on the Saint Hill Special Briefing Course.

Class 7, 8 and 9 Courses contain more advanced materials used to free a being. They are grouped into training levels that parallel the advance made by L. Ron Hubbard in his ever-continuing research into the unexplored areas of Life.

These courses are also available in the Western Hemisphere only at the New ASHO in Los Angeles.

New students from everywhere on this side of the world converge on this giant organization every week for the powerful, precise training available here. The way is wide open for you, too!

Ron personally gave to students on the original course. All the books. Approximately 3,000 pages of PABS and Bulletins. Along with further training and drilling on skills expected of the Class 6 Auditor, the data on the course ...ngs tremendously increased certainty and confidence, and a well-rounded philosophical understanding of Life itself.

Class 5, the theory part of the course, is studied during the morning hours. In the early afternoon hours, the student studies the Class 6 part of the course, which consists of practical drills. Later in the afternoon, students co-audit.

While on the Briefing Course, you'll receive the fabulous Power and Power Plus processes at a special 50% student discount rate. And you are awarded the Solo Audit Course at the Advanced Organization at no extra charge.

As a graduate of the Briefing Course, you'll have the skills, precision and velocity needed to progress further in Scientology and help more people with auditing. And you'll have such a complete knowledge of the laws of this universe that you'll operate with a tremendously heightened effectiveness in your personal life as well.

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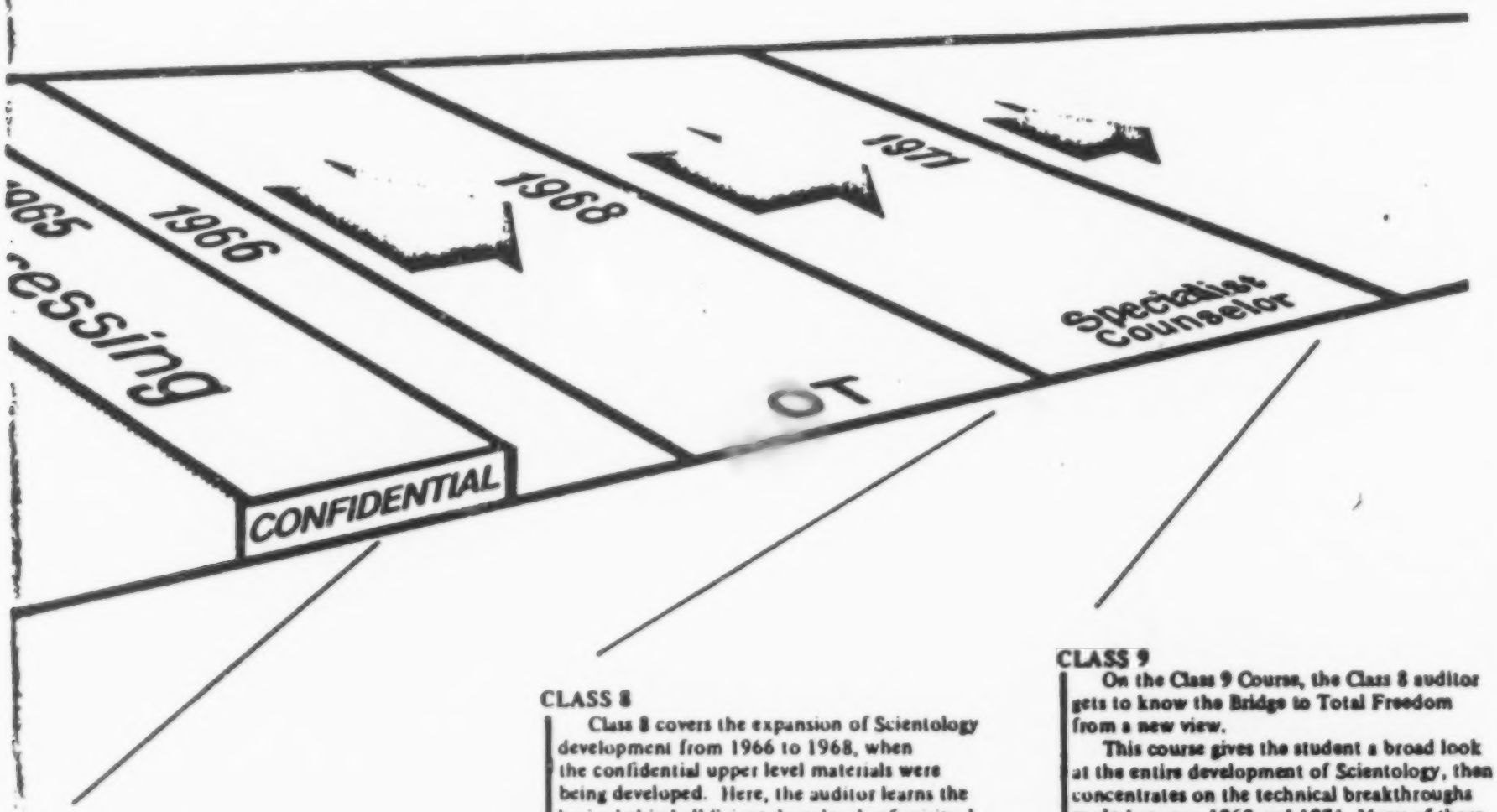

CLASS 7

Class 7 is a short study course and internship combined. It produces a flubless Auditor who can deliver the phenomenal Power and Power-Plus processes with the precision necessary at this level. Class 7 auditors are the only people allowed to deliver these confidential techniques, which are available to all Scientologists at upper level organizations, and staff members at local organizations. Right now, just about any Church of Scientology in the world would hire the first Class 7 who walked in the door, so great is the demand for these cream-of-the-crop professionals.

But auditing Power is only the beginning. The precise communication cycle perfected at this level under the Class 9 Case Supervisor makes a Power auditor different, no matter what he audits. One auditor said "A program that would have taken 5 hours as a Class 6 took 3-3½ hours as a Class 7."

CLASS 8

Class 8 covers the expansion of Scientology development from 1966 to 1968, when the confidential upper level materials were being developed. Here, the auditor learns the basics behind all Scientology levels of spiritual counseling, including the confidential advanced levels. Even people processed to these levels do not have much of the data on Class 8. The course includes 19 taped lectures by L. Ron Hubbard which are available only to Class 8's.

Key secrets of the universe and its present condition that are found only on this course will be available to you. You will receive the full data on the structure of the mind, the exact nature of a spiritual being, and full history of very advanced Scientology materials. You'll be able to deliver spiritual counseling to everyone from a new Scientologist to those at the most advanced levels of processing.

Class 8 is the course which reveals the basic simplicity of 100% standard technology to the auditor, because its materials are truly the essentials of Life itself. And a Class 8 learns to get 100% results. One student states "All the complexities I had left over seemed to just blow off on the 8 course!"

CLASS 9

On the Class 9 Course, the Class 8 auditor gets to know the Bridge to Total Freedom from a new view.

This course gives the student a broad look at the entire development of Scientology, then concentrates on the technical breakthroughs made between 1968 and 1971. Many of these developments are followed right through their research by studies of recent preclear folders personally supervised by L. Ron Hubbard during the course of experimental processing. You will also learn the advanced theory of why many counseling techniques applied at lower levels do work. This gives the Class 9 an unheard-of precision in programming and delivery of these actions.

Interning as a Class 9 produces an auditor completely at ease with the application of all Scientology technology currently in use at Churches throughout the world. You will graduate as a totally experienced auditor, with the highest possible understanding of people.

Church of Scientology of California
The New American Saint Hill Organization

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- Go all the way to Class IX at ASHO. the Class IX Org

Save $647.45

By signing up with complete donation for the full Training Package from Class 5 to 9. Contact the Registrar at your local Church, Mission or directly at ASHO for full information.

GLOSSARY:

PABS: Professional Auditors' Bulletins issued to auditors during the '50s and '60s

Clear: One who can be at cause knowingly and at will over mental matter, energy, space and time as regards the first dynamic (survival for self).

Grade VI Release: The level between Power Plus (Grade VA) and Clear, at which a person becomes free of dramatization.

Operating Thetan (OT): A Clear who has been refamiliarized with his environment to a point of total cause over matter, energy, space and time, and who is not necessarily in a body.

HSDC: Hubbard Standard Dianetics Course.

Preclear: One who is not yet Clear; generally someone receiving Scientology or Dianetic processing.

OT III: The level at which an operating Thetan becomes free from overwhelm.

Internship: Auditing done after a course, where a student perfects his skills and earns permanent certification at his level.

CLASS 9 AUDITOR

Time: 3 weeks. Prerequisites are Class 7 and Permanent Class 8 certificates. Donation: $1,500. Less 5% in advance, $1,425.

Class 9 internship, required for permanent certification, takes 3 weeks. Donation: $375.

CLASS 8 AUDITOR

Time 3 weeks. Prerequisite: Class VII and auditing well on OT III. Donation: $1,500. Less 5% if made in advance, $1425.

Permanent certification is achieved after a Class 8 internship, Allow 3 weeks. Donation: $375.

CLASS 7 AUDITOR

Any Class 6 who has previously done a good Dianetic or Class 4 internship, and who is Clear, may enroll on the Class 7 internship at once.

Time is approximately 3 weeks. Donation: $775. Less 5% if made in advance, $736.25.

CLASS 6 AUDITOR

CLASS 5 AUDITOR

Time: About 5 months. Prerequisite: HSDC and Level 4, or HCA/HPA. Clears and above may begin the Briefing Course immediately after completing HSDC. Donation: $775. Less 5% discount for advance payment: $736.25. Permanent certification is achieved after a Class 6 internship. Time: 3 weeks or so. Donation: $375.

Available only at the New American Saint Hill Organization

CLASS 4 AUDITOR

CLASS 3 AUDITOR

CLASS 2 AUDITOR

CLASS 1 AUDITOR

CLASS 0 AUDITOR

Available at your local Church

DIANETIC AUDITOR

Available at your local Church or Mission

The ability to bring relief and freedom to fellow beings with a precision equal to landing a space-shuttle on the moon is totally new to this universe.

Scientology (the fastest growing religion in the world today) has such a spiritual technology. It was developed over a period of four decades by L. Ron Hubbard, Founder of Scientology, and it is applied each day around the world by highly skilled auditors.

An auditor is a Minister of the Church of Scientology, and is a listener—one who listens carefully to what people have to say. He or she is a person trained and qualified in applying Scientology spiritual counseling to others for their betterment.

In order to set out the specific levels of skill different auditors had achieved, L. Ron Hubbard created a new arrangement to grade Auditors in 1964. This grouping into levels is called the CLASSIFICATION SYSTEM. Today each Auditor is awarded a Class certification for the level of proven ability he has attained.

At lower levels, the beginner is a Dianetic Auditor, and with his specialized skills in spiritual counseling can produce in another a well and happy human being.

A Class 0 (zero) Auditor can produce in another the ability to communicate with anyone on any subject.

A Class 1 Auditor can produce in another the ability to recognize the source of problems and make them vanish.

A Class 2 Auditor can produce in another the ability to be at cause without fear of hurting others.

A Class 3 Auditor can produce in another the ability to face the future and ability to experience sudden changes without getting upset.

A Class 4 Auditor can produce in another the ability to do new things and to face life without need to justify own actions or defend from others—a being who can be right or wrong. **(continued inside)**

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REGISTRATION PACKET

AS A SPECIAL OFFER TO THOSE WHO PAY IN ADVANCE, A 5% DISCOUNT IS GRANTED. JUST CHECK THE SERVICE OR SERVICES YOU DESIRE AND RETURN WITH YOUR CHECK OR MONEY ORDER, MADE OUT TO: THE NEW AMERICAN SAINT HILL ORGANIZATION:

Name and address:

ADVANCE PAYMENT DISCOUNT FORM

To: The Director of Income

I would like to receive a 5% discount from the New American Saint Hill Organization Foundation for the following marked services, by paying the full price by return mail.

I. TECH COURSES

☐ HUBBARD STANDARD DIANETICS COURSE—Available to people who are coming to Saint Hill for a major service who have not yet completed the course. Price, $500.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $475.00 for the Dianetics Course.

×

_____

(signature)

☐ HUBBARD DIANETIC INTERNSHIP—Available to people who are coming to Saint Hill for a major service who have not yet completed the course, but who have completed the HSDC. Price, $125.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $118.75 for the Dianetic Internship.

×

(signature)

☐ HUBBARD DIANETIC C/S COURSE—Available to people who coming to Saint Hill for a major service who have not completed the course, but who have completed the Dianetic Internship. Price, $250.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $237.50 for the Dianetic C/S Course.

×

(signature)

☐ HUBBARD INTEGRITY PROCESSING COURSE—Available to people who have training in the auditing comm cycle, TR's and metering (old HPA's, Social Counselor's Course, or HDC). More preferrably, that a person have a Class II certificate or above. Price, $500.00. Deducting 5% for Advanced Payment, make out check/money order and sign:

Please find enclosed my payment for $475.00 for the Hubbard Integrity Processing Course.

×

(signature)

☐ INTEGRITY PROCESSING INTERSHIP—The course available to Hubbard Integrity Processing Course graduates to make their certificates permanent. Price, $125.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $118.75 for the Integrity Processing Internship.

×

(signature)

☐ EXPANDED DIANETICS COURSE (INCLUDING INTERNSHIP)—A course available to people who have completed the Class IV Internship. Price, $1000.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $950.00 for the Expanded Dianetics Course.

×

(signature)

☐ EXPANDED DIANETIC C/S COURSE—Available to people who have completed the Expanded Dianetics Course and Internship. Price, $325.00. Deducting 5% for Advanced Payment, make out check/money order and sign:

Please find enclosed my payment of $308.75 for the Expanded Dianetic C/S Course.

×

(signature)

☐ SAINT HILL SPECIAL BRIEFING COURSE—For Professional Auditors who hold a Level IV Classification or Clears who have completed the HSDC. Price, $775.00. Deducting 5% for Advanced Payment, make out check/money order and sign:

Please find enclosed my payment of $736.25 for the Saint Hill Special Briefing Course.

×

(signature)

☐ SAINT HILL SPECIAL BRIEFING COURSE—POWER PACKAGE—For Level IV Auditors who have not already had Power Processing. This package includes the Saint Hill Special Briefing Course with a 50% discount on Power Processing. Price, $775.00 plus $600.00, $1375.00. Deducting 5% for Advanced Payment on the Saint Hill Special Briefing Course, please make out check/money order and sign:

Please find enclosed my payment for $1336.25 for the Saint Hill Special Briefing Course Power Package.

×

_____

(signature)

☐ CLASS VI INTERNSHIP—An Internship for Class VI Auditors who have not done the lower internships which fully qualifies the auditor to permanent Class VI. Price, $375.00. Deducting 5% for Advanced Payment, please make out check/money order and sign:

Please find enclosed my payment of $356.25 for the Class VI Internship.

×

_____

(signature)

☐ CASE COMPLETIONS—Case Completions are actions by higher Classed Auditors done to complete actions to complete other incomplete actions up to a person's current case level.

Sold at regular intensive rates of:

$625 per 12½ hour intensive
$1250 per 25 hour intensive
$2350 per 50 hour intensive
$3350 per 75 hour intensive

$4250 per 100 hour intensive
$5750 per 50 hour intensive

5% Advance Payment discount of:

$593.75 per 12½ hour intensive
$1187.50 per 25 hour intensive
$2233.50 per 50 hour intensive
$3192.50 per 75 hour intensive
$4037.50 per 100 hour intensive
$5462.50 per 150 hour intensive

At 5% Advance Payment rates, please make out your check/money order and sign:

Please find enclosed my payment of _____ for a —— hour intensive.

×

_____

(signature)

Total Payment Due

TOTAL .....

Make out your check/money order for this amount payable to the New A.S.H.O., and return with this registration packet.

NOTE: If you do not have the full payment to take advantage of the 5% discount, you may use your Advance Registration Deposit of $150 as a down payment and pay the rest in monthly installments.

☐ Check here if this service is desired. Then fill out and return the New American Saint Hill Savings Club Application.

TAKE THE BRIEFING COURSE ROUTE TO CLEAR AND SAVE £1375 FOR YOUR O.T. LEVELS

The SHSBC only takes about 3 months so you'll be Clear FAST!
And you will have saved £1375 towards your
O.T. levels and further training.

YOU WILL ALSO BE A MORE CAPABLE O.T. AS YOU'LL HAVE THE DATA TO HELP PEOPLE — AS AN O.T.

Exh. V

TRAIN NOW

On The SAINT HILL
SPECIAL BRIEFING COURSE

START on a SUCCESSFUL CAREER OF HELPING PEOPLE GO FREE

Ex. V

Get the satisfaction of watching others go free

Being an Auditor, you already know tnat there's nothing like the excitement of the moment your preclear suddenly discovers a new awareness or realizes a new ability. And knowing that you helped is a satisfaction beyond compare. It's the most O.T. effect you can cause. The Briefing Course is what makes you a professional at this.

TRAIN WEEK NIGHTS AND/OR WEEKENDS AT:

ASHO FOUNDATION

ON THE SAINT HILL SPECIAL BRIEFING COURSE

You know that as an auditor, if you continue the same process after the preclear has reached End Phenomena on it, he'll go into a decline. Nothing ever stays the same in this universe. That which does not expand tends to contract. So it is vital that you continue on up the Bridge with your training and continue to expand to full O.T. Being an Auditor, you are already among the most capable Beings on this Planet. Decide that you're going to do your Briefing Course now and make it happen.

write or see:

The Letter Registrar
New American Saint Hill Foundation
Church of Scientology
2723 West Temple Street
Los Angeles, California 90026 (213) 386-7100

Copyright (c) 1973 by L. Ron Hubbard. All rights reserved. The Church of Scientology is a non-profit organization. Scientology is an applied religious philosophy.

YOU'LL ENJOY WORKING WITH THE WINS OF TECH AS YOU INCREASE YOUR ABILITIES

Finished the SHSBC. Great wins doing this course! Every Class IV should do this course. It gives the complete data for an accomplished auditor. The V Checksheet was the best ever and VI polished my skills. I'm looking forward to Class VII and further auditing ability and wins.

Ron Wolfe
SHSBC Graduate

Level V is a very groovy course. It is the perfect gradient for any Class IV interned auditor. I gained a very orderly time track of tech knowledge which goes with any well rounded auditor. I feel really good that I accomplishlished this tremendous cycle.

Sheila Sullivan
Level V Grad.

This is the greatest action I have done in Scientology. This technology and ability gives one what he needs to succeed in life and livingness and help others to succeed.

LaVerne Jardine
Level V Grad.

I have so much affinity for Ron! After getting all the data on Level V, I have a very new and comprehensive viewpoint on auditing. I have watched over the months how my auditing has changed as a result of what I have learned on the SHSBC. I am very comfortable with Standard Tech.

Karen Rathburn
Level VI

Level V is by far the best course I've ever done. Studying all the Briefing Course data in chronological order has given me a relaxed, secure understanding of the lower level technology and a fantastic affection and admiration for LRH.

Don Rowley
Level V Grad.

BUT — how easy is it?

With the latest tech on study (Primary Rundown is free with the Saint Hill Special Briefing Course) and Integrity Processing for students and Auditors, any trouble you ever had on the lower levels will be be handled with ease at ASHO, and you'll fly through with lots of wins!

THE CHURCH OF SCIENTOLOGY
MISSION OF RIVERSIDE

3485 UNIVERSITY AVE.
RIVERSIDE, CALIFORNIA 92501
(714) 683-4574

Customer's Order No. 825-4227 | Date 13 FEB 1977

Sold to DAVE MAYNARD

Address 251 E MARIANA ST

City RIALTO, CA 92376

Sold by	Cash	C.O.D.	Charge	On Acct	Mdse. Ret.	Paid Out	

Quantity	Description	Price	Amount
	25HRS X ON @ 88¢/HR		
	OUT OF AP		22.00
	PRICE AT TIME OF PURCHASE		
		Tax	
Thank You	In case of claims or returned goods please present this bill	Total	

I have read the "Information , Definitions, Rules" dated MARCH 1976 and I understand that it contains the basis upon which the above religious services of auditing and/or training are delivered by the Church.

No. 22043 David F. Maynard
MEMBER'S SIGNATURE

UARCO Business Forms

THE CHURCH OF SCIENTOLOGY

MISSION OF RIVERSIDE

3485 UNIVERSITY AVE.
RIVERSIDE, CALIFORNIA 92501
(714) 683-4574

(P)

Customer's Order No.	Date
875-4227	13 FEB 1977

Sold to: DAVE MAYNARD

Address: 251 E MACIAL A ST

City: RIALTO, CA 92376

Sold By	Cash	C.O.D.	Charge	On Acct.	Mdse. Ret.	Paid Out	
DM							

Quantity	Description	Price	Amount
	KOAKS @ 50∞/AC		
	CUT OF AP		5000
	PRICE AT TIME		
	OF PURCHASE		
		Tax	
Thank You — In case of claims or returned goods please present this slip		Total	

I have read the "Information, Definitions, Rules" dated MARCH 1976 and I understand that it contains the basis upon which the above religious services of auditing and/or training are delivered by the Church.

No. 22042 David F. Maynard

MEMBER'S SIGNATURE

UARCO Business Forms

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CHURCH OF SCIENTOLOGY
MISSION OF RIVERSIDE

(For the Communication Course application only.)
INFORMATION - DEFINITIONS - RULES
December 1976

(THE BASIS UPON WHICH TRAINING IS DELIVERED BY THE CHURCH)

Scientology, as practiced by the Church of Scientology, is a spiritual and religious guide intended to make persons more aware of themselves as spiritual beings and not treating or diagnosing of human ailments of the body or mind nor engaged in the teaching or practicing of the medical arts or sciences.

Dianetics is practiced in the Church of Scientology as pastoral counselling, addressing the Spirit in relation to his own body and intended to increase well-being and happiness.

The Church of Scientology advises medical attention from a person's own doctor for any physical infirmity or mental illness, and reserves the right to suspend from training, any such person until he has sought advice from a medical practitioner.

DEFINITIONS

SCIENTOLOGY - The word Scientology is derived from the Latin SCIO (I know; sciens, knowing) and the Greek LOGOS (the word; ology, study of). It is an applied religious philosophy.

DIANETICS - Dianetics is derived from the Greek DIA (through) and NOUS (spirit).

• • • • • •

A student is required to eat properly, sleep well and refrain from drugs and alcohol during the period that he or she is on course.

A person who uses drugs by way of medical treatment should seek the advice of a medical practitioner before ceasing to use them.

Nothing is claimed for any course of training given by the Church other than claims made in its own current professional literature which relate specifically to a particular course given by the Church and which bear the Church's copyright. By "current" is meant within a year of commencing a particular course.

Scientologists recognize and revere the Spiritual leadership of L. Ron Hubbard as the Founder, and as the source of the religious philosophy of Scientology. His achievement in developing a practical and workable religious technology is without parallel in history.

He is not a Director of the Church of Scientology, and has no legal responsibility for its management. The practice of Scientology and Dianetics in the Church and the provision of all courses of training, are the sole responsibility of the present Board of Directors.

There are many books on the subject Scientology and Dianetics, by L. Ron Hubbard. As he himself has said, "they are a record of research and are writings. They represent a very broad survey of the whole field of human knowledge and the mind and contain ANYTHING THAT WAS FOUND". They recount observations by the author as a consequence of his research and learning over a long period of time, and should be construed only as a written record of such research and not as a statement of claims made by the Church or the author. The books must be available to students, for the student to reach his own understanding of the teachings of L. Ron Hubbard, and in adopting this position, the Church adopts these words of its Founder:

"WHAT IS TRUE FOR YOU IS WHAT YOU HAVE OBSERVED FOR YOURSELF."

"NOTHING IN DIANETICS AND SCIENTOLOGY IS TRUE FOR YOU UNLESS YOU HAVE OBSERVED IT."

"AND IT IS TRUE ACCORDING TO YOUR OBSERVATION THAT IS ALL."

Subject to the policies of the Claims Verification Board, a student who (1) is no longer in agreement with the Creed of the Church of Scientology, (2) makes a written request for a refund not later than 90 days after the end of the Communications Course, (3) undertakes to release the Church and its employees from further obligation, (4) agrees to abide by the Administrative procedures of the Claims Verification Board may be granted a refund of the hours not yet delivered for the Communications Course, less a 12½% administrative fee (12½% of the total donation for the Communications Course). The Communications Course is delivered based upon the student taking 40 hours to complete. Thus, for example, if a student has been on the Communications Course for 20 hours, he can request a refund of one half of the donation paid less a 12½% administrative fee. However, he will not again be allowed to take Scientology services. If, on the other hand, the full 40 hours have been delivered OR the course has been completed accompanied by a Success Story, there is no recourse for refund.

The results claimed, and the benefits obtainable from Church services, though they may be observable to others, are personal and are experienced by the individual himself or herself. It is essential that you participate actively and honestly in the course you are undergoing, and while so doing observe the advices and ethical prescriptions which the Church has laid down to assist your progress.

In return, the Church will do its best to ensure that you attain the result claimed for the particular course you are undergoing.

You are expected not to proceed to a further course until you are completely satisfied with the results obtained from your preceding course.

Minors are required to obtain the consent of a parent or guardian before undertaking a course.

The Church may suspend any student, for violation of the course rules.

The Church delivers training solely on the understanding contained in this sheet, and you are requested to have carefully read and digested it before commencing any course or counselling.

ENROLLMENT FORM (PART ONE)

INTERNATIONAL MEMBER APPLICATION FORM: I, ...
(Full Name)

of .....
(Address)

apply for Church of Scientology International Membership. I am willing to subscribe to the Creed of the Church of Scientology, and to the mission and purpose of the Church of Scientology, which is to assist the individual to become more aware of himself as an immortal being, and to help him achieve basic truths with regard to himself, his relationship to the physical universe, and the Supreme Being, and to create, here on earth, a civilization of which all can be proud.

Signed ..... Date .....

ENROLLMENT FORM (PART TWO)

1. (To be completed by applicant) I, ...
(Full Name)

of .....
(Address)

being a Church of Scientology International Member hereby apply for The Communications Course, in the Church of Scientology, Mission of Riverside. The member has read the above "Information, Definitions, Rules" Dated December 1975 and understands that it contains the basis upon which the Communications Course is delivered by the Church.

Signature of Member ..... Date .....

Signature of Parent or Guardian if applicant is a minor.

..... Date .....

Name of person accepting application on behalf of the Church

..... Offering: .....

Signed on behalf of the Church: ..... Date .....
(For the Board of Directors)

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THE CHURCH OF SCIENTOLOGY
MISSION OF RIVERSIDE
3486 University Ave, Riverside, Ca. 92501 Phone (714) 683-4674

Information - Definition - Rules
The basis upon which auditing and training is delivered by the church
For students and preclears, MARCH 1976

Scientology, as practised by the Church of Scientology, is a spiritual and religious guide intended to make persons more aware of themselves as Spiritual Beings restoring respect for self and others, and not treating or diagnosing human ailments of body or mind nor engaged in the teaching or practicing of the medical arts or sciences.

Dianetics is practiced in the Church of Scientology as pastoral counselling, addressing the Spirit in relation to its body and is intended to increase wellbeing and peace of mind.

The Church of Scientology advises medical attention from a person's own doctor for any physical infirmity or mental illness, and reserves the right to suspend from auditing or training, any such person until he has sought advice from a medical practicioner.

The word Scientology is derived from the Latin Scio (I know: scien, knowing) and the Greek Logos (the word: ology, study of). It is an applied religious philosophy.

Dianetics is derived from the Greek DIA (through) and NOUS (spirit).

AUDITING is a pastoral counselling procedure by which an individual is helped, in stages, to recover his self-determinism, ability and awareness of self, restoring respect for self and others.

An AUDITOR (literally: one who listens) is a trained Scientology Minister or Minister in-training, who delivers Scientology or Dianetic auditing.

The Auditor uses interpersonal communication and carefully devised questions and drills, intended to enable the Church member being audited, called the PRECLEAR, to discover or thereby remove his self-imposed limitations.

A preclear or student is required to eat properly, sleep well, and refrain from drugs and alcohol during the period that he or she is being audited or trained.

A person who uses drugs by way of medical treatment should seek the advice of a medical practicioner before ceasing to use them.

Nothing is claimed for any auditing or training given by the Church, other than claims made in it's own current professional literature which relate specifically to a particular auditing level or training course given by the Church and which bear the Church's copyright. By current is meant within a year of commencing a a particular auditing level or training course.

The E-Meter is used in auditing, by the auditor, who has been trained in its use. It is not used by the preclear, nor is a preclear required to possess one. Indeed, the Church will only make E-Meters available to Ministers and student Ministers. It is a religious artifact, which is intended to help the Auditor to audit the preclear. By itself, it does nothing. It may be compared with a magnifying glass which enables a viewer to observe things of the Spirit which he would otherwise miss. It is not intended for, or effective in, the diagnosis, treatment or prevention of any disease.

Scientology recognizes and revers the Spiritual leadership of L. Ron Hubbard as the Founder, and as the source of the religious philosophy of Scientology. His achievement in developing a practical and workable religious technology is without parallel in history.

He is not a Director of the Church of Scientology, and has no legal responsibility for its management. The practice of Scientology and Dianetics in the Church and the provisions of all courses of auditing and training are the sole responsibility of the present Board of Directors.

There are many books on the subject of Scientology and Dianetics by L. Ron Hubbard. As he himself has said, "they are a record of research and are writings. They represent a very broad survey of human knowledge and contain "ANYTHING THAT WAS FOUND". They recount observations by the author as a consequence of his research and learning over a long period of time, and should be construed only as a written record of such research and not as a statement of claims made by the Church or the author. The books must be available to students, for the student to reach his own understanding of the teachings of L. Ron Hubbard, and in adopting this position, the Church adopts those words of its Founder: "WHAT IS TRUE FOR YOU IS WHAT YOU HAVE OBSERVED FOR YOURSELF." "NOTHING IN DIANETICS AND SCIENTOLOGY IS TRUE FOR YOU UNLESS YOU HAVE OBSERVED IT." "AND IT IS TRUE ACCORDING TO YOUR OBSERVATION THAT IS ALL".

Subject to the policies of the Claims Verification Board, a preclear or student who (1) is no longer in agreement with the Creed of the Church of Scientology (2) makes a written request for a refund not later than 90 days after the end of auditing or training (3) undertakes to release the Church and its employees from any further obligation (4) agrees to abide by the administrative procedures of the Claims Verification Board, may be granted a refund of hours not yet delivered for that particular auditing level or training course. REFUND FOR TRAINING: Each training course is delivered on estimated hours of completion, as written on course check sheet. A refund may be requested on any undelivered hours, less a 12½% administrative fee of the total donation for stated course. REFUND FOR AUDITING: Auditing is delivered on an hourly basis and all requested refunds shall be computed according to the following formula. Total donation less 12½% administrative fee of total donation less number of auditing hours used multiplied by ... per hour equals amount of refund. If the total hours donated have been delivered or the auditing and/or training has been completed accompanied by a Success story there is no resource for refund.

It is within the absolute discretion of the Case Supervisor whether or not a preclear continues his/her auditing or routes on to training or Life Repair.

The results claimed, and benefits obtainable from auditing and training, though they may be observable to others, are personal and are experienced by the individual himself or herself. It is essential that you participate honestly and actively in the auditing level you are undergoing.

In return, the Church will do its best to ensure that you attain the result claimed for the particular auditing level or training course you are undergoing.

You are expected not to proceed to a further course until you are completely satisfied with the results obtained from your preceding course.

Minors are required to obtain the consent of a parent or guardian before undertaking an auditing level or training course.

The Church may suspend any preclear or student for violation of the auditing or training course rules, without recourse to refund.

The Church delivers auditing and training solely on the understanding contained in the above, and you are required to have carefully read and digested it before commencing any auditing level or training course.

ENROLLMENT FORM (PART ONE)

INTERNATIONAL MEMBER APPLICATION FORM I, ... (Full Name)

of ..... (Address) ..... (Date of Birth)

apply for Church of Scientology International Membership. I am willing to subscribe to the Creed of the Church of Scientology, and to the mission and purpose of the Church of Scientology, which is to assist the individual to become more aware of himself as an immortal being, and to help him achieve basic truths with regard to himself, his relationship to the physical universe, and the Supreme Being, and to create, here on earth, a civilization of which all can be proud.

Signed ..... Date .....

ENROLLMENT FORM (PART TWO)

1. (To be completed by applicant) I, ... (Full Name) of ..... (Address)

being a Church of Scientology International Member hereby apply for spiritual counselling (auditing/training), in the Church of Scientology, Mission of Riverside. Give details if you wish: .....

The member has read the above "Information, Definitions, Rules" Dated March 1976 and understands that it contains the basis upon which the religious services of auditing and training are delivered by the Church.

Signature of Member ..... Date .....

Signature of Parent or Guardian if applicant is a minor ..... Date .....

NAME OF MEMBER .....

Level of Spiritual Counselling /Training applied for: .....

Name of person executing application on behalf of the Church .....

Signed on behalf of the Church .....

9003 386 Copyright © 19[illegible] by [illegible] INT NO. 371405

Exh. AE

SUPREME COURT OF THE UNITED STATES

No. 87-1616

KATHERINE JEAN GRAHAM, *et al.*,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE

ORDER ALLOWING CERTIORARI

Filed May 23, 1988

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. This case is consolidated with No. 37-963, *Hernandez v. Commissioner of Internal Revenue*, and a total of one hour is allotted for oral argument.

Justice Brennan and Justice Kennedy took no part in the consideration or decision of this petition.

UNITED STATES TAX COURT

#13620-84

MR. ROBERT L. HERNANDEZ,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

PETITION

The petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated 21 February 1984, and as the basis for his case alleges as follows:

1) The petitioner is an individual with principal' office now at 14th St. & D 26, Quintas Decupey, Rio Piedras Puerto Rico 00926. The return was filed with the Office of the Internal Revenue Services at Philadelphia, PA.

2) The notice of deficiency was mailed to the petitioner on 21 February 1984 and was issued by the Office of the Internal Revenue Service at Washington, D.C.

3) The deficiencies as determined by the Commissioner are in income taxes for the calendar year 1981 in the amount of $2,245.00 of which $2,245.00 is in dispute.

4) The determination of tax set forth in the said notice of deficiency is based upon the following errors:

   a) Payments made by Mr. Robert L. Hernandez to the Church of Scientology are deductible under IRC 170.

5) The facts upon which the petitioners relies as the basis of his case, are as follows:

a) As in #4 above, we state that these payments to the Church of Scientology are donations. The petitioner has already proven that payments were made.

The petitioner requests that proceedings not be conducted under IRC 7463. The petitioner requests that the place of trial be Los Angeles, CA.

Wherefore, the petitioner prays that the deficiency of $2,245.00 be waived.

Dated: 4 May 1984

/s/ Robert L. Hernandez

Mr. Robert L. Hernandez
c/o 1770 N. Vermont #108
Los Angeles, CA 90027
213-666-7700

Department of the Treasury
Social Security Number or
Employer Identification Number:
093-40-9237
Tax Year Ended and Deficiency:
12-31-81 $2,245.00

Person to Contact:
E. M. Brookins
Contact Telephone Number:
(202) 566-3573

Internal Revenue Service
Foreign Operations District

Date: 21 Feb. 1984

Mr. Robert L. Hernandez
14th St. & D 26, Quintas Decupey
Rio Piedras, Puerto Rico 00926

Dear Mr. Hernandez:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the amount of your tax. The petition should be filed with the United States Tax Court, 400 Second Street, NW, Washington, DC 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and *the Court cannot consider your case if your petition is filed late.* If this letter

is addressed to both husband and wife, and both want to petition the Tax Court, *both* must sign the petition or each must file a separate, signed petition.

If you dispute not more than $5,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at the Court's Washington, DC address shown above. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to charge your account quickly and will limit the accumulation of interest. The enclosed addressed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to bill you after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any question, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

ROSCOE L. EGGER, JR.
Commissioner

By /s/ Thomas J. Clancy
District Director,
Foreign Operations District

Enclosures:
Copy of this letter

Waiver

Envelope

BEST AVAILABLE COPY

Income Tax Examination Changes

Name of Taxpayer	Year	Form	Filing Status	In Reply Refer To:
ROBERT L. HERNANDEZ	1981	1040	SINGLE	PR/AG
Name and Title of Person With Whom Changes Were Discussed	**Date of Report**		**Social Security Number**	**Examining District**
	12-22-83		093-40-9237	GG

Income and Deduction Amounts Adjusted

Explanation No. (See attached)	Item Changed	Amount Shown on Return or as Previously Adjusted	Corrected Amount of Income and Deduction	Adjustment Increase (Decrease)
3601	Contributions	7,398.00	60.00	7,338.00

A. Adjustment in income-increase (decrease) (see explanation of adjustments attached)	7,338.00
B. Adjusted gross, taxable, or tax table income reported or as previously adjusted	13,799.00
C. Corrected adjusted gross, taxable, or tax table income	21,137.00
D. Tax computed with exemptions	4,503.00
E. Credit for personal exemptions	—
F. Tax credits (credit for the elderly, investment, foreign, or other allowable credits) (if adjusted, see explanation attached)	—
G. Other taxes (self-employment, minimum, alternative minimum, tax from recomputing prior year investment credit, advance earned income credit payments, etc.) (if adjusted, see explanation attached)	—
H. Corrected tax (line D less line E less line F plus line G)	4,503.00
I. Tax shown on return or as previously adjusted	2,258.00
J. Deficiency (increase in tax before credit adjustments—line H less line I)	2,245.00
K. Overassessment (decrease in tax before credit adjustments—line I less line H)	—
L. Adjustments to prepayment credits	—
M. Balance due – this does not include any interest charges (line J or K as adjusted by line L)	2,245.00
N. Overpayment – this does not include any interest due you (line J or K as adjusted by line L)	—
O. Penalties, if any (see explanation attached)	—

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases exchanged with the states. If this change affects the amount of your state income tax, you should file the required state form.

Consent to Assessment and Collection - I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Court the findings in this report. Therefore, I consent to either:
(1) The immediate assessment and collection of the balance due shown on line M, plus any interest due on this tax, and also any penalties shown on line O, or
(2) The overpayment shown on line N, plus any interest and adjusted by penalties shown on line O.

Your signature _____ Date _____ Spouse's signature, if a joint return was filed _____ Date _____

Form 9 (Rev.

141

Form 886-A
(Rev. May 1980)

Explanation of Item

Name of Taxpayer	Year/Period Ended
ROBERT L. HERNANDEZ	1981/8112

3601- Since the reported contribution was not made to a qualified organization, we disallowed it.

UNITED STATES TAX COURT

Docket No. 13620-24

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits that petitioner is an individual with [residence at 14th St. & D26, Quintas Decupey, Rio Piedras, Puerto Rico 00926. Denies the remaining allegations of paragraph 1 of the petition for lack of current knowledge sufficient to form a basis for belief as to truth of the matter stated.

2. and 3. Admits the allegations of paragraph 2 and 3 of the petition.

4. Denies that the Commissioner erred as alleged in paragraph 4 of the petition.

5. Denies the allegations of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied,

WHEREFORE, it is prayed:

1. That the relief sought in the petition be denied; and

2. That the deficiency in income tax for the taxable year 1981, as set forth in the statutory notice, be in all respects approved.

FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

By: /s/ Marlene Gross
MARLENE GROSS
District Counsel
Foreign Operations

Of Counsel:

DAVID E. GASTON
Regional Counsel
KRISTINE A. ROTH
Attorney
District Counsel, Foreign Operations
1325 K Street, N.W., Room 620-A
Washington, D.C. 20225
Tel. No. (202) 566-5862

(Certificate of Service Omitted in Printing)

UNITED STATES TAX COURT

Docket No. 13620-84

ROBERT L. HERNANDEZ,
Petitioner(s),

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION

It is hereby stipulated by and between Petitioner(s) and Respondent, by their respective counsel of record, that they will be bound herein by any relevant findings of fact and conclusions of law made by the Court in its opinions and decisions in three certain 'test' cases, namely, Docket Nos. 5837-76, 9384-79 and 374-80, to the extent that such findings of fact and conclusions of law shall have been actually briefed, argued and submitted in the said 'test' cases, and have been based upon stipulations and/or undisputed facts therein, excluding, however, findings of fact and conclusions of law relating to any petitioner's subjective intent.

It is understood and agreed that nothing in this stipulation, or in any order based hereon, shall in any way be construed as waiving or changing the venue of any appeal from decision herein, as provided in IRC § 7—82 (b)(1)(a); and that to the extent relevant the records in the said Docket Nos. 5837-76, 9384-79 and 374-80 shall be deemed part of the record herein for purposes of any such appeal.

FRED T. GOLDBERG, JR.
Chief Counsel
Internal Revenue Service

By /s/ Dorothy W. Westover

Dorothy W. Westover
Assistant District Counsel
300 W. Los Angeles Street
P.O. Box 2031, Main P.O.
Los Angeles, California 90053
Tel. No. (213) 688-4636

Counsel for Respondents

Dated: 28 Jun. 1984

/s/ Tobias C. Tolzmann
5564 Kawaikui Street
Honolulu, Hawaii 96821
(808) 373-1554

Counsel for Petitioner(s)

Dated: June 21, 1984

SUPREME COURT OF THE UNITED STATES

No. 87-963

ROBERT L. HERNANDEZ,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

ORDER ALLOWING CERTIORARI

Filed April 18, 1988

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

Justice Brennan and Justice Kennedy took no part in the consideration or decision of this petition.

Nos. 87-963, 87-1616

Supreme Court, U.S.
FILED
JUL 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,
Respondent.

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

KATHERINE JEAN GRAHAM, RICHARD M. HERMANN, AND DAVID FORBES MAYNARD,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

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BRIEF FOR THE PETITIONERS

Of Counsel
SARAH B. GORDON
FINE, KAPLAN & BLACK
1845 Walnut Street
Philadelphia, PA 19103

MICHAEL J. GRAETZ
127 Wall Street
New Haven, CT 06520
(203) 432-4828
Counsel of Record for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether the Commissioner of Internal Revenue incorrectly applied § 170 of the Internal Revenue Code of 1954 in reversing seven decades of prior IRS interpretations and disallowing charitable contribution deductions for payments made by individual members of the Church of Scientology solely to participate in religious services of their faith.

2. Whether denying charitable contribution deductions under § 170 for payments by Scientologists to participate in their faith's core religious sacraments violates the religion clauses of the First Amendment.

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

Hernandez v. Commissioner. The opinion of the Court of Appeals for the First Circuit is reported at 819 F.2d 1212 (1987). HPA 1a.[1] The opinion of the United States Tax Court in the case designated as providing binding factual and legal findings in *Hernandez* is *Graham v. Commissioner*, 83 T.C. 575 (1984). HPA 31a. The decision of the Tax Court in the *Hernandez* case is not reported. HPA 43a.

Graham v. Commissioner. The opinion of the Court of Appeals for the Ninth Circuit in the consolidated Graham, Hermann and Maynard appeals is reported at 822 F.2d 844 (1987). GPA 1a. The opinion of the United States Tax Court in this consolidated action is reported at 83 T.C. 575 (1984). GPA 36a. The Tax Court's decisions in the three cases are not reported. GPA 33a, 34a, and 35a.

JURISDICTION

Hernandez v. Commissioner. The decree of the Court of Appeals was entered on June 1, 1987. HPA 29a. A petition for rehearing was denied on July 15, 1987. HPA 30a. On October 6, 1987, Justice Brennan extended the time for filing a petition for certiorari to and including December 12, 1987. HPA 42a. The petition for a writ of certiorari was filed on December 11, 1987, and was granted on April 18, 1988. JA 147. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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[1] References in this brief are indicated as follows:

To the numbered pages of the printed Joint Appendix (JA ——); to the numbered pages of the Appendix to the petition for certiorari in *Hernandez*: (HPA ——); to the numbered pages of the Appendix to the petition for certiorari in *Graham*: (GPA ——); to the numbered pages of the transcript from the Tax Court proceedings: (Tr. ——).

Graham v. Commissioner. The judgment of the Court of Appeals was entered on July 17, 1987. GPA 19a. A petition for rehearing was denied on December 1, 1987. GPA 20a. By order dated February 19, 1988, Justice O'Connor extended the time for filing a petition for certiorari to and including March 30, 1988. GPA 51a. The petition for writ of certiorari was filed on that date, and was granted on May 23, 1988. That Order also consolidated the *Graham* and *Hernandez* cases. JA 135. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The religion clauses of the First Amendment and pertinent portions of 26 U.S.C. § 170 and 26 U.S.C. § 501 are set forth in an Appendix to this brief.

STATEMENT OF THE CASE

The Nature of the Proceedings

In each of these cases, the Internal Revenue Service ("IRS") assessed tax deficiencies, denying charitable deductions claimed under § 170 of the Internal Revenue Code ("the Code") for payments made by the taxpayers in connection with their participation in religious practices of their church, the Church of Scientology.[2] The

[2] Petitioner Katherine Jean Graham was denied income tax deductions of $1,682.00 for contributions to the Church of Scientology Hawaii, and was assessed a tax deficiency in the amount of $316.24 for 1972. JA 11. Petitioner Richard M. Hermann was denied a tax deduction of $3,922.00 for similar payments to the Church of Scientology, American Saint Hill Organization, and was assessed a tax deficiency of $803.00 for 1975. JA 17. Petitioner David Forbes Maynard was denied a deduction for payments to the Church of Scientology, Mission of Riverside, totalling $5,000.00 (including a carryover of $2,385.00 for contributions made in 1976) and was assessed a tax deficiency of $643.00 for 1977. JA 23. Petitioner Robert L. Hernandez was denied an income tax deduction of $7,338.00 for contributions to the Church of Scientology, and was assessed a tax deficiency in the amount of $2,245.00 for 1981. JA 141.

taxpayers challenged the deficiencies in the Tax Court, and the cases of petitioners Graham, Hermann, and Maynard were consolidated for trial. Tr. 3. Petitioner Hernandez waived trial and, subject to his right of appeal, agreed to be bound by the relevant factual and legal findings of the Tax Court (excluding those relating to "subjective intent") in the designated *Graham* trial. JA 145.[3]

In the consolidated *Graham* case, the Tax Court upheld the Commissioner of Internal Revenue's ("the Commissioner's") disallowance, holding that petitioners' participation in religious services constituted a *quid pro quo* barring deduction of their payments. *Graham v. Commissioner*, 83 T.C. 575 (1984). GPA 36a. On appeal, the Ninth Circuit affirmed the decisions of the Tax Court. 822 F.2d 844 (1987). GPA 1a.

On the authority of *Graham*, the Tax Court entered its judgment in favor of the Commissioner in the *Hernandez* case. HPA 43a. On appeal, the First Circuit affirmed the Tax Court's decision. 819 F.2d 1212 (1987). HPA 1a.

Based on its opinion and decisions in the consolidated *Graham* cases and the parties' agreements to be bound by the outcome of that proceeding, the Tax Court entered judgments against other similarly situated taxpayers who were contesting tax deficiencies for their contributions to various churches and missions of the same religious denomination. Thereafter, similar appeals, based on records incorporating the same factual stipulations, have been decided by or are pending in eleven Courts of Appeals. In addition to the First and Ninth Circuits in the cases on review, panels of the

[3] In the *Hernandez* case (and in similar stipulated cases), the Commissioner of Internal Revenue and the petitioners stipulated in the Tax Court that the consolidated Graham, Hermann, and Maynard cases were typical and that, to the extent relevant, the record of those cases was to be incorporated into the record of all proceedings in petitioners' case. JA 145.

Fourth and Tenth Circuits affirmed the Tax Court's decisions. *Miller v. Internal Revenue Service*, 829 F.2d 500 (4th Cir. 1987), *petition for cert. filed*, March 1, 1988 (No. 87-1449) and *Christiansen v. Commissioner*, 843 F.2d 418 (10th Cir. 1988),[4] *petition for cert. filed*, June 10, 1988 (No. 87-2023). The Eighth and Second Circuits, however, reversed the Tax Court, holding that the payments were deductible. *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, Feb. 19, 1988 (No. 87-1382) and *Foley v. Commissioner*, 844 F.2d 94 (2d Cir. 1988). (Counsel has been advised that the government will file a certiorari petition in the *Foley* case.)

Statement of Facts

The Commissioner and the taxpayers in both cases on review stipulated that Scientology, the faith whose sacraments are at issue here, is a religion and that the recipients of the contributions, Scientology missions and churches, were, at all relevant times, churches within the meaning of Internal Revenue Code § 170(b)(1)(A)(i) and tax-exempt religious organizations under §§ 170 and 501 of the Code eligible to receive deductible contributions. JA 38, ¶¶ 52, 53.[5]

Scientologists believe the enhancement of civilization is linked to their spiritual goals and practices. Adherents of this Church take part in the rituals of "auditing" and "training," the central practices of this faith. The payments at issue here were made in connection with the taxpayers' participation in these religious services.

[4] The West Publishing Company has erroneously captioned this case *Lee v. Commissioner*.

[5] At trial the taxpayers and the government entered into extensive stipulations of fact which were made part of the Tax Court's findings. 83 T.C. 575, 576. The stipulations filed in petitioner Graham's case (identical to the stipulations in the Hermann and Maynard cases, except for certain individualized facts, and made part of the record in the *Hernandez* case) are reprinted in the Joint Appendix. JA 29.

Auditing takes place one-on-one with the parishioner and a trained Church staff member known as an "auditor." JA 31, 32, ¶¶ 13, 14, 22. Adherents are taught that "the individual is an immortal spirit who has a mind and a body" and "that the highest level of spiritual ability and awareness can be obtained only by progressing on a step-by-step basis through lower and intermediate levels of Auditing." JA 31, ¶ 16. "Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology." JA 31, ¶ 15. Auditing is a standardized religious practice, not one designed to satisfy individual tastes or needs: the "structure, ritual and content of each auditing session" is based on the "level of attainment of the Scientologist being audited." JA 31, ¶ 17. No subject matter is taught, studied or learned during auditing. JA 32, ¶ 23.[6]

In training, the other religious practice at issue here, parishioners study "the doctrine, tenets, codes, policies and practices of Scientology" and study the scriptures of Scientology to the exclusion of all other materials. Tr. 111, 117-18, JA 45-46, 49-50; JA 32, ¶ 24. As part of training, a person may audit others. Tr. 111, 114, JA 45, 47. Scientologists undergo training to achieve religious enlightenment and the ability to help others (including the ability to audit another person). Scientologists believe that the spiritual benefits derived from auditing and training accrue not only to the individual but also to the public at large. Tr. 103-05, 115, 129-30,

[6] Dr. Thomas Love, Professor of Religious Studies, California State University at Northridge, California, gave his uncontradicted expert opinion that "auditing" is "the essential religious experience of the Church of Scientology." Tr. 291. Dr. Love testified that, as with Eastern religions such as Hinduism and Mahayana Buddhism, "the major emphasis" in Scientology "is upon affecting the world for good by obtaining one's enlight[en]ment and going out and hopefully assisting others to do the same." Tr. 298, JA 82. The government presented no expert testimony regarding the religious practices at issue.

166-67, 179-80, 203, JA 40-42, 48, 53, 60-61, 66-67, 70-71.[7]

The taxpayers testified that they had made their payments so that they or their children could participate in religious services and because they wanted to support the religious goals and projects of their church. Tr. 166-67, 203, 208, 260-61, JA 60-61, 70-72, 75-76; Tr. 175. None of the taxpayers received any material goods or secular services with respect to the payments at issue.

In accordance with the stipulations and testimony, the Tax Court found the practices at issue to be religious. 83 T.C. at 580, 581 ("Petitioners wanted to receive the benefit of various religious services provided by the Church of Scientology. . . . Petitioners Graham and Hermann made payments for which they received religious services. . . . Petitioner Maynard made advance payments . . . [that] entitled him to receipt of [such] services in the future.") As the Second Circuit stated in an affiliated case: "auditing and training are *the* religious practices of the Church of Scientology." *Foley*, 844 F.2d at 97 (emphasis in original).

The Churches of Scientology have established a schedule of payments for auditing and training and refer to such payments as "fixed donations" or "fixed contributions."[8] JA 34, ¶ 36. Advance payments are encouraged and refunds are sometimes made for unused payments. 83 T.C. at 578. The Churches promote participation in their religious services, using such techniques as free lectures, handouts and media advertising, but they do not actively solicit contributions from members or from the public other than through fixed donations for participation in these religious services. JA 34, ¶ 41; 83 T.C. at 579.

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[7] Dr. Love testified that "training" is a form of religious observance, comparable to devotional study of sacred texts in the Buddhist and Judaic traditions. Tr. 314-17, JA 92-94.

[8] Auditing, for example, is given in sessions. An "Intensive" is a specific number of hours—12½ or 25—intended to be given over a short period of time. JA 31-32, ¶ 21.

Although the Churches perform a variety of services for their members without charge, including weddings, christenings, and funerals, and offer a specialized form of auditing to help people in crisis for which no donation is expected, participation in the religious services of auditing and training generally is conditioned on fixed donations. Such payments, the major source of funding for the Church, are at issue here. JA 34, ¶¶ 39, 40. *See also* Tr. 136-39, 199-200, JA 55-58, 67-68; 83 T.C. at 578.

The Tax Court found that the Church's system of fixed donations is the application of a religious doctrine, "the Doctrine of Exchange." 83 T.C. at 577. Amounts of fixed donations traditionally have been set at levels that correspond roughly to a percentage of the income of church members. For example, the Tax Court found that 25 hours of auditing historically has correlated with three months' pay for average middle-class workers in the church district. 83 T.C. at 578 n.7. Dr. Love's uncontradicted expert testimony established that such fixed or prescribed fees for participation in religious practices are comparable to "seat fees" in the Jewish faith, pew rentals and Mass fees in the Protestant and Catholic traditions, and tithing in Mormonism. Tr. 302-04, 305-08, 311-13, JA 84-86, 87-89, 91-92.

SUMMARY OF ARGUMENT

1. For nearly 70 years, the Internal Revenue Service has allowed charitable contribution deductions under § 170 of the Internal Revenue Code for individuals' payments to churches and synagogues to participate in the sacraments of their faiths, regardless of whether the amounts of payment are determined by the individual or set by the religious organization. The decisions on review thus reverse decades of consistent administrative interpretations, which have never been questioned by Congress nor formally abandoned by the IRS and which are solidly grounded in the language, legislative history and policies of the Internal Revenue Code. The decisions below improperly apply legal doctrines, which evolved to

protect against tax abuses when purchases of secular goods and services are disguised as charitable contributions, by extending to religious services principles announced by this Court in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), a case involving deductions claimed for insurance premiums. Extension of *American Bar Endowment* to disallow deductions for the religious practices at issue here treats religion as if it were a secular commodity and requires the IRS and the courts to place an economic value on religious services, a task that is both impractical and unconstitutional.

2. The Commissioner stipulated and the Tax Court found that the recipients of the donations at issue here, various missions and churches of the Church of Scientology, are tax-exempt churches, eligible to receive deductible contributions under § 170, and that the donations were structured by the Church in accordance with religious doctrine and were made by the individual taxpayers solely for religious services and for the financial support of their church. Neither the "form" or "structure" of this system of fundraising, nor the nature, quality or value of the religious services received by members in return, provides a principled basis for distinguishing the payments at issue here from payments by millions of Americans to the churches and synagogues of other religious denominations—payments for which the IRS consistently has allowed deductions. Fixed payments, individualized worship services, and promises of personal benefits in return for religious faith and practice are common to many religions. For example, Mass stipends in the Catholic faith, pew rents in Protestantism, tithes in Mormonism, and annual dues, High Holy Day tickets, and Passover fees in Judaism—fund-raising practices involving payments fixed by the church or synagogue and grounded in religious doctrines and customs —are all analogous to the fund-raising practices at issue here.

The Eighth Circuit reaffirmed the long-held IRS policy and reached the correct conclusion in one of the associated cases:

> [W]e conclude that regardless of the timing of the payment or details of the church's method of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of section 170.

Staples, 821 F.2d at 1327.

The unprecedented position advocated by the Commissioner here presents a striking departure from longstanding IRS interpretations of § 170. Neither the lower courts nor the government have cited a case, other than those involved in this litigation, in which a taxpayer has been denied a charitable deduction for payments made solely to participate in religious services.

The IRS now seeks a license to select at will those payments for religious services it will allow to be deducted and those it will not. This departure from traditional principles of tax administration is unwarranted and unjustified by any valid distinction between the fund-raising practices of Scientology and those of other religions.

3. The traditional policy that allows deductions for payments to churches and synagogues in return for participation in central worship services is a valid accommodation of the religious interests of individual believers. *Walz v. Tax Comm'n*, 397 U.S. 664 (1970). The Commissioner's unilateral abandonment of that policy violates the religion clauses of the First Amendment. The decisions below raise the specter of entanglement between government and religion, created by the need to place a monetary value on religious services and to evaluate the "structure" of church fund-raising practices based on religious doctrine. Furthermore, the taxation only of fixed payments of Scientologists or of their individual form of worship establishes an unconstitutional denominational preference, *Larson v. Valente*, 456 U.S. 228 (1982), placing a stamp of state approval on churches

that do not specify costs of membership or that worship congregationally.

ARGUMENT

I. THERE IS NO PRINCIPLED DISTINCTION BETWEEN THE PAYMENTS OF SCIENTOLOGISTS AND A WIDE VARIETY OF OTHER PAYMENTS TO RELIGIOUS DENOMINATIONS—NONE OF WHICH HAS HAD ITS DEDUCTIBILITY CHALLENGED BY THE IRS.

A. Seventy Years of Consistent IRS Interpretations of § 170 Support Deductibility of Fixed Payments.

From the early days of the income tax until this litigation, the IRS consistently has allowed deductions under § 170 (and its predecessors) for payments made by individuals to churches and other religious organizations for participation in their sacraments. Accordingly, the IRS has issued pronouncements explicitly allowing deductions even when receipt of religious services depends upon the payment of pew rentals, assessments or periodic dues. *See* A.R.M. 2, 1 C.B. 150 (1919) ("In substance it is believed that these [along with 'basket collections'] are simply methods of contributing, although in form they may vary"); Rev. Rul. 70-47, 1970-1 C.B. 49 (reaffirming A.R.M. 2).

The reaffirmation of the principles of A.R.M. 2 in Revenue Ruling 70-47, issued half a century later, made it clear that the IRS would not challenge individuals' payments, regardless of their form, to churches or synagogues to participate in religious services, nor, in the case of religious services, would the IRS follow its usual practice of attempting to offset charitable contribution deductions by the value of secular or economic benefits received in return.[9] Revenue Ruling 70-47 remains in force today.

[9] The 1970 issuance of Rev. Rul. 70-47 is particularly significant since it postdates the IRS's promulgation of Rev. Rul. 67-246, 1967-2 C.B. 104, the key ruling on disallowance of all or part of charitable contributions made in exchange for economic benefits from secular charities, and Rev. Rul. 68-432, 1968-2 C.B. 104, a ruling detailing various instances where membership dues to secular charities are deductible only in part, because the deduction is reduced by the "monetary value" of secular benefits to members. Subsequent administrative pronouncements have been favorable to religious payments. *See, e.g.*, Rev. Rul. 78-366, 1978-2 C.B. 241 (estate tax charitable deductions allowed for bequest to church to say Masses for decedent's family); Rev. Rul. 76-323, 1976-2 C.B. 18 (allowing deductions for payments of entire income from outside employment to religious order as condition of membership); Rev. Rul. 71-580, 1971-2 C.B. 235 (allowing tax exemption as religious organization to family corporation organized to compile genealogical information on family members in order to perform religious sacraments). If the payments are made to a church, synagogue or other religious organization tax-exempt under § 501(c)(3) (or its predecessors) and eligible to receive deductible contributions under § 170(b)(1)(A)(i) and § 170(c)(2) (or their predecessors), the form of such payments or the nature or value of the religious services received in return always have been treated as irrelevant or "incidental" if the payment was for participation in religious practices. Even payments that are fixed and/or required as a condition of receiving a religious service, routinely are deductible under § 170. See Section II, *infra*.

As a result of the prior IRS practice of uniformly allowing deductions under § 170 for payments to churches such as those at issue here, the question before this Court has not been litigated previously. However, the holdings of the Tax Court and affirming Courts of Appeals—that receipt of a strictly religious benefit is a substantial "financial or economic benefit" and a "*quid pro quo*" requiring denial of the taxpayers' charitable deductions—are a striking departure from seven decades of consistent IRS interpretations. As the Eighth Circuit noted in *Staples*, 821 F.2d at 1326, "[n]either the Tax Court nor the government has cited a case in which a taxpayer has been denied a deduction for payments keyed to participation in strictly religious practices."

The Courts of Appeals that have affirmed the Tax Court's decision have extended *United States v. American Bar Endowment*, 477 U.S. 105 (1986)—which disallowed charitable contribution deductions for insurance premiums in connection with a trade or business unrelated to any tax-exempt activity—to deny deductions for payments made by individuals to their churches solely to

participate in religious services. These courts held that deductions would be allowed only if the taxpayer could show that the amounts paid exceeded the *value of the religious benefits* obtained in return.[10] *Hernandez*, 821 F.2d at 1217; *Graham*, 822 F.2d at 849; *Christiansen*, 843 F.2d at 420-21; *Miller*, 829 F.2d at 503-04. *See also Foley*, 844 F.2d at 98-99 (Newman, J., dissenting). Three affirming courts explicitly grounded their disallowance of the deductions on the "structure," "external features," or "circumstances" of the "transaction." *Graham*, 822 F.2d at 848-49; *Christiansen*, 843 F.2d at 420; *Miller*, 829 F.2d at 505.

To the contrary, the Eighth and Second Circuits held that "participation in strictly spiritual and doctrinal religious practices" is not the kind of "material, financial or economic" benefit that would constitute "adequate consideration" to deny charitable deductions under *American Bar Endowment*. *Staples*, 821 F.2d at 1327; *Foley*, 844 F.2d at 96-97. *See also Christiansen*, 843 F.2d at 421 (Seymour, J., dissenting). As the Eighth Circuit put it:

> [W]e conclude that regardless of the timing of the payment or details of the church's method of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of section 170.

Staples, 821 F.2d at 1327.

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[10] Each of these appellate courts applied the *American Bar Endowment* test—"[t]he *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration" (477 U.S. at 118)—to deny the deductions. *Hernandez*, 819 F.2d at 1216-18; *Graham*, 822 F.2d at 849; *Christiansen*, 843 F.2d at 420; *Miller*, 829 F.2d at 503. They concluded that participation in religious services constituted "adequate consideration" to deny the deductions, holding that receipt of religious benefits should not be distinguished from receipt of secular benefits.

Regardless of outcome, each appellate court at least acknowledged that the First Amendment's command of neutrality among religious denominations requires an identical legal standard to be applied whenever individuals make payments to churches or synagogues and expect to receive religious services or benefits in return. As the Tenth Circuit put it: "The relevant question is whether the taxpayer *expected a benefit* in return for the payment; deductibility does *not* depend on what type of benefit the taxpayer received." *Christiansen*, 843 F.2d at 420 (emphasis added). The dissenting judge in that case observed that a decision in favor of the government has "ominous implications for all religious institutions." *Id.* at 421 (Seymour, J., dissenting). None of the affirming appellate courts, however, has squarely faced the challenges to other religions implied by their decisions.[11]

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[11] *Graham*, 822 F.2d at 850 ("We are not convinced that [rulings and case law allowing deductions for payments to participate in religious services] would comport with the analysis of section 170 that we have set forth here."); *Hernandez*, 819 F.2d at 1227 ("[W]e have some doubt as to the continuing validity of the presumption in Rev. Rul. 70-47, 170-1 C.B. 39 [sic], that pew rents and mandatory church dues are tax deductible gifts."); *Christiansen*, 843 F.2d at 420 ("We agree with the First Circuit that application of the *American Bar Endowment* standard could create practical and constitutional difficulties in some cases."); *Miller*, 829 F.2d at 505 ("We have no reason to believe that the IRS will fail to apply the principles that *emerge from this litigation* in its treatment of other religious groups.") (emphasis added); *Foley*, 844 F.2d at 98 (Newman, J., dissenting) ("Payments for pew rentals and attendance at High Holy Day Services are close to the line, and as the Ninth Circuit has observed, not all of the Commissioner's prior rulings in this area may be defensible.").

The Eighth Circuit agreed that previous IRS rulings would be invalidated by upholding the disallowance of deductions in these cases: "If the [Scientologists'] payments were not contributions, then 'the passing of the collection plate in church would make the church service a commercial project.'" *Staples*, 821 F.2d at 1327 (quoting *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943)). *See also Foley*, 844 F.2d at 96-97 ("Donations related to participation in religious observances, however, have not been regarded as yield-

B. The Fixed Donations At Issue Here Are Grounded In Religious Doctrine And Are Indistinguishable Legally From Fund-Raising Practices Of Other Faiths.

1. *Neither Scientology Fund-Raising Practices Nor The Nature Of The Religious Services Received By Scientologists Provides Any Basis For Singling Out Members of This Faith For Disallowance Of Charitable Deductions.*

As in most other churches and religious organizations, donations from adherents provide the majority of Scientology church funds and are used to pay the costs of operations and activities of the church. *Graham*, 83 T.C. at 578. The Tax Court found that the fixed donation method of funding church operations and activities is based on a religious tenet called the "Doctrine of Exchange." 83 T.C. at 577.[12] Many mainstream Christian and Jewish churches and synagogues traditionally have used fixed payments in exchange for participation in religious services as a fund-raising device.

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ing specific private benefits to the donor, who is considered only an incidental beneficiary, the primary beneficiaries of the observances being the members of the faith and the general public. . . . [T]here is no way of measuring spiritual or religious benefits in such a way as to conclude that they are 'commensurate' with the fees paid for participation in the religious activities giving rise to those benefits.")

[12] The Doctrine of Exchange, based upon early writings of the founder of the Church of Scientology, generally relates to the need to "balance inflow and outflow" (or, put another way, the need to give as well as receive). Tr. 136-37, 202-03, JA 55-56. A person must outflow to maintain a balance and to be an ethical Scientologist. Tr. 202-03, JA 69-71. A person who receives but does not contribute or exchange something in kind will suffer spiritual decline. Tr. 136, 203, JA 70-71. The Doctrine of Exchange operates in many personal realms of a Scientologist's life, including, for example, relationships and responsibilities with respect to one's children or community, in addition to providing the doctrinal basis for the fixed donations at issue here. Tr. 202-03, JA 69-71. The Tax Court specifically found that the "Church of Scientology applies this doctrine by charging a 'fixed donation' for training and auditing." 83 T.C. at 577.

The Church of Scientology, of course, is not unique either in grounding its method of soliciting funds in religious doctrine—particularly in religious doctrine that applies also to other aspects of a member's religious experience and life—or in promising both spiritual and secular betterment from participation in religious activities. As the review of traditional Christian and Jewish fund-raising practices set forth below illustrates, exhortations, pressures and even requirements of financial commitments to churches or synagogues are common to many mainstream Western faiths and constitute an essential means both of fundraising and regulating members' behavior.

Nor does the nature of the religious practices or the benefit received provide any legal basis for disallowing deductions for these payments. Practitioners of mainstream Biblical religions routinely are promised rewards for their faithful *and financial* participation in the beliefs and practices of their churches. Numerous churches proselytize by promising personal benefits to members such as jobs, better health and solutions to personal problems, among others. Tr. 309-11, JA 89-91. Religious people of all faiths expect substantial personal and spiritual benefits from participating in their religions' sacraments. But expectations of such gains from religious giving have never before precluded deduction of payments under § 170, despite the fact that participating in religion may bring peace of mind or even better work habits.

Nevertheless, the Ninth Circuit regarded the emphasis on private and individual benefits found in the literature of this church as a ground for disallowing the deductions.[13] Such emphasis on the individual is understand-

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[13] The Ninth Circuit opinion suggests that church literature stating that the individual "is the direct and primary beneficiary" of the religious practices that "are the fruits of his payments" renders the payments nondeductible. *Graham*, 822 F.2d at 850. To the contrary, the First Circuit in *Hernandez* asserted explicitly that the individual rather than group setting of the religious services of the Church of Scientology "is completely irrelevant to the statutory

able, however, given that the religious services at issue here are provided on an individual basis, rather than in the congregational setting of most Western religions, and in light of this religion's affinity to Eastern religions, notably Buddhism.[14]

Indeed, auditing is analogous to the Christian practices of "spiritual direction" [15] and confession, recognized

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inquiry." 819 F.2d at 1219. The *Hernandez* court, however, suggested that an individual setting might affect the costs of the religious services, *id.*, and that such costs might be an important determinant of the value of the religious services received and therefore of the amount of allowable deductions. *Id.* at 1217. The court in *Hernandez* also acknowledged that the individual nature of the religious service had been an important factor in the IRS's decision to disallow the deductions here:

> The IRS found significance in the fact that unlike the collective worship services obtained in exchange for pew rents and, to a large degree, membership dues, auditing and training services are performed in private sessions.

Id. at 1227.

The IRS's distinction between group ("congregational") religious services and individual religious services in interpreting § 170 is of great significance because the IRS enjoys a presumption of correctness in tax cases. *See Welch v. Helvering*, 290 U.S. 111 (1933); Rule 142, Rules of Practice and Procedure of the U.S. Tax Court.

[14] Analogies between the tenets of Scientology and Buddhism are contained in the uncontradicted expert testimony in the trial court as well as in the church's literature and that of commentators. *See* Tr. 303-10, JA 85-90 (Testimony of Dr. Love); Church of Scientology, *Scientology: A World Religion Emerges in the Space Age* 9-11 (1974) (detailing similarities between Scientology and Buddhism); and Flinn, "Scientology as Technological Buddhism," in *Alternatives to American Mainline Churches* 100 (J. Fichter, ed. 1983) (noting that Scientology "looks inward for the illumination of the sacred" rather than "looking upward for a revelatory experience which is deemed beyond human capacity").

[15] Spiritual direction involves working with a spiritual preceptor who uses his or her knowledge of spiritual development to guide his or her disciple on the path to the spiritual goal. 14 *The Encyclopedia of Religion* 29 (M. Eliade, ed. 1987). This practice has prominence particularly in Catholic and Episcopal churches.

also across religious traditions.[16] The expected benefits of auditing have been "compared to the Christian sequence sin/justification or sin/forgiveness through grace," although "[c]onsistent with its Buddhist-like notion of inner enlightenment, Scientology holds each member responsible." Flinn, "Scientology as Technological Buddhism," in *Alternatives to American Mainline Churches* 103-04 (J. Fichter, ed. 1983).[17] Regardless of denomination or the individual or congregational nature of core religious practices, religious people expect substantial individual spiritual benefits to flow from participation in their religions. The benefits expected by the church members in this case, such as the ability to deal with people more effectively, are similar to the benefits of religious belief and practice for many individuals, and are analogous to the rewards promised throughout the Bible for faithfulness.

See, for example, 3 Sisters of St. Joseph of Philadelphia, *Encyclopedic Dictionary of Religion* 3367 (1979), where "spiritual direction" is called a "form of ministry by which one person guides another in the way of evangelical perfection." *See also* M. Thornton, *Spiritual Direction* 14 (1984) ("spiritual direction is unashamedly individualistic because it guides and develops that individuality without which corporate action and influence by the organic Church is impossible.").

[16] In both Christianity and Jainism, individual confession to a priest or guru is essental to religious practice. 4 *The Encyclopedia of Religion* 1, 4, 6 (M. Eliade, ed. 1987). In Catholicism failure to confess may result in estrangement from the Church as a result of exclusion from the Eucharist. K. Rahner & H. Vorgrimler, *Dictionary of Theology* 370-75 (1981).

[17] Contrary to the implication in *Graham*, 822 F.2d at 850, auditing is not designed to satisfy individual tastes or needs. The stipulations indicate that auditing is standard, with the structure, ritual and content of each session determined by religious rituals, tenets and doctrines and the "level of attainment of the Scientologist being audited." JA 31, ¶¶ 15, 17. The auditor responds according to prescribed tenets of the religion and never by analyzing the individual's personal situation. Tr. 108-110, JA 43-45 (testimony of Reverend Bruce Gaines, a Scientology minister).

As the following review makes clear, fund-raising practices of familiar Western churches and synagogues are comparable to Scientology's practice of "fixed donations" for specific religious services. In mainstream churches and synagogues, neither expectations of individual spiritual gain from religious giving nor the fact that the amount of donation is fixed by the church have ever before precluded deductions under § 170. Moreover, neither the Internal Revenue Code nor its policies permits a distinction between individual and congregational worship in determining deductibility under § 170. Finally, such a distinction would condition tax benefits on the tenets of a particular denomination in contravention of the First Amendment. *See, e.g., Larson v. Valente*, 456 U.S. 228, 244 (1982) and Section III, *infra*.

2. *Mainstream Christian And Jewish Denominations Raise Funds Through Fixed Payments Linked To Specific Religious Services.*

a. *Christian Fund-Raising Practices.*

Mass Stipends. The Catholic practice of individual payments, fixed in amount by the church, for Masses said in the name of an individual payor or for the "purpose" or "intention" of the payor ("Mass stipends") has a long tradition, apparently originating in the antiquated practice of granting indulgences for almsgiving.[18] A "Mass stipend" is a monetary offering made for celebration of a Mass "for the intention specified by the donor."[19]

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[18] Although indulgences—the remission of punishment due to sins—have been granted by the Catholic Church for the performance of acts, the payment of funds was among the specified conditions that could produce the relaxation of sacramental penances or the commutation of penalties required by the Church. *Encyclopedic Dictionary of Religion, supra,* at 1797. Abuses led to the elimination of "sales" of indulgences 1567. *Id.* For a discussion of the relationship between indulgences and the saying of votive Masses, *see* H. Lea, *A History of Auricular Confession and Indulgences in the Latin Church* 89 (1896).

[19] *Encyclopedic Dictionary of Religion, supra,* at 3394. A priest who accepts a Mass stipend "incurs a grave obligation to apply the fruits of the mass according to his agreement with the donor." The

An admixture of theological and fund-raising considerations has required that the payment of funds precede the saying of the Mass or Masses.[20] The contractual nature of Mass stipends in no way suggests that the value of the religious benefit—the "priceless fruit of Holy Mass"—turns on the amount paid: "[T]here need not be any proportion between the value of the stipend and the value of the Mass." Keller, *supra,* at 27, 26.

The amount required to be paid for Mass stipends was set historically by diocesan statute or local custom and now is set by provincial council or a meeting of a province's bishops.[21] Masses said at privileged altars

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seriousness of both the contractual undertaking by the priest and the "loss or injury" to the "giver of the stipend" are such that it is a "mortal sin to omit even one mass charged for a stipend." Keller, *Mass Stipends* 25-27 (Ph.D. Dissertation 1925). Keller emphasizes the contractual nature of this fund-raising practice and elaborates the ecclesiastical laws regulating such contracts, noting that:

> Mass stipends belong to that class of bilateral innominate contracts which is known as "do ut facias." This means that one party agrees to give something whilst the other party agrees to do something in return.

Id. at 25. Keller's interpretation of Mass stipends as *do ut facias* contracts under the Canon law in effect from 1917-1983 are confirmed in J. Coriden, T. Green & D. Heintschel, *The Code of Canon Law: A Text and Commentary* 668 (1985) (explaining the 1983 revision of Canon Law concerning Mass stipends).

[20] Keller, *supra,* at 56 (footnote omitted):

> The practice of celebrating a Mass before it has been requested and later accepting an offering for that Mass, deters the faithful from giving stipends, because the people suspect that priest of taking the money without discharging the obligation imposed by its acceptance. Moreover, it prevents the giver of the stipend from attending the Mass or at least from disposing himself more perfectly by contrition, Confession or Communion, to profit by the fruits of that Mass.

[21] *See* Coriden, Green & Heintschel, *supra,* at 670-71 (Canon 952) (noting that the change from local to provincial setting of amounts to be paid was to promote "uniformity of practice among neighboring dioceses").

sometimes have commanded higher stipends, and advance payments are acceptable if no more is accepted than for masses that can be said in one year. *Id.* at 74, 113 (citing Canon 835). If the money paid for saying Mass is lost or stolen, the Mass must nevertheless be said or the money refunded.[22]

Pew rents. Apparently dating from the 16th century, a pew rent is a charge levied upon an individual or family for using specific pew space at religious services. *Encyclopedic Dictionary of Religion*, *supra*, at 2760. Pew rents were at one time an important source of church revenue in the United States, but generally were abandoned in the first half of the 20th century. *Id.* Pew rents have been replaced by "seat collections," a fund-raising practice that does not involve reservation of specific space, relying instead on collections at each service rather than on less frequent collections, such as annual. *Id.* at 2760, 3236.[23]

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[22] *See* Keller, *supra*, at 81-82 (citing Canon 829) ("[I] seems that according to Canon law the giver of a stipend has a right to demand either the money or the celebration and application of a Mass.") (footnote omitted).

[23] Many Protestant denominations use "every person visits" or "every member visits"—individual visits to each church member by pastors or well-trained church stewards—as an important fund-raising technique. *See, e.g.*, O. Pendleton, Jr., *New Techniques for Church Fund-raising* (1955); T. Thompson, *Handbook of Stewardship Procedures* (1964); United Church of Christ, *Money for the Church's Ministries: Basic Resourcebook* (1980). The individual nature of such appeals, which often request a predetermined contribution as an affirmation of church membership, confirms that fundraising, including discussion of the rewards of church membership, is often conducted on an individual basis even in congregational churches. As with other forms of church fundraising, interconnections between benefits of faith and payments to the church are emphasized. The Thompson book, for example, includes 131 Biblical references that are suggested as potential bases for "stewardship sermons" by pastors and "ten new stewardship hymns." Thompson, *supra*, at 101-15. *See also* the supplement to the *Basic Resourcebook*, *supra*, entitled *Money for the Church's Ministries: Surveying the Biblical Basis and Engaging in Worship* (1980) (elaborating on the correlation between faith and financial support).

Tithes. Tithing—paying a given percentage of one's income to the church—has long been an important source of funds for certain churches, one with direct Biblical linkage.[24] Whether tithing is a requirement or a voluntary offering has varied among religious denominations and across time.[25]

Mormons, for example, must tithe ten percent in accordance with that church's "worthiness" standards to obtain a "temple recommend," a prerequisite to admission to the temple. *See Corporation of the Presiding Bishop v. Amos*, 107 S.Ct. 2862, 2865 n.4 (1987). Mormon temples play a "critical role" in Mormon life; it is in these temples that the most important rituals are performed, such as baptisms of the living and the dead and rites that bind members to their unique church traditions. Tithing is enforced through the rigorous questioning of those seeking temple recommends, through reports of ward bishops and, for church employees, through payroll records. J. Heinerman & A. Shupe, *The Mormon Corporate Empire* 96-97, 102-03 (1985). *See also* Reorganized Church of Jesus Christ of Latter-Day Saints, *The Priesthood Manual* 278 (1982) ("The presenting of the tithing statement is . . . an act of worship.")

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[24] *See, e.g., Deuteronomy* 14:22 ("You shall tithe all the yield of your seed, which comes forth from the field year by year").

[25] Tithing was the law of the early Christian church, officially required of all members from the year A.D. 585. *See* Knox, "The Ministry in the Primitive Church," in *The Ministry in Historical Perspectives* 30 (H. Niebuhr & D. Williams eds. 1953), *quoted in* D. Johnson, *The Tithe: Challenge or Legalism?* 45 (1984). For more than a thousand years, tithing was legally enforced in western Europe. T. Thompson, *Handbook of Stewardship Procedures* 19 (1964). Tithing continues to be strongly encouraged by many churches and required by some. *See, e.g., id.*; R. Kendall, *Tithing: A Call to Serious Biblical Giving* (1982) (contending that tithing is "required" for all Christians). *Cf.* H. de Mena, Jr., *How to Increase Parish Income* (1982) (urging voluntary tithing, to be encouraged through professional fund-raising mailers and personal visits by the priest to each parishioner).

In addition to the fund-raising advantages to churches that accrue from tithing and the spiritual gains to the payor, material benefits also are sometimes asserted to flow from tithing. See, for example, R. Kendall, *supra*, at 21, where the author states:

> [w]e have a number of rather plain statements that . . . clearly point to the material return [for tithing] as one kind of blessing from the Lord. Obviously some will prosper more than others, owing to gifts, place of responsibility, or opportunity. But at the bottom of it all is a promise for all believers that they will be honored even at a material level in such a way that . . . is more than it would have been had they not been faithful in Christian stewardship.

b. *Jewish Fund-Raising Practices.*

As with other religions, Jewish fund-raising practices are grounded in religious beliefs, traditions and customs. Such practices vary not only among the main religious categories—Orthodox, Conservative and Reform—but also among synagogues and temples within these categories and, for example, often depend upon customs based on geographic origin. Moreover, as with Christian churches, Jewish fund-raising practices have changed over time, often responding to changes in religious or secular aesthetics. Because ancient Jewish law forbids the handling of money on the Sabbath or High Holy Days when attendance is greatest, synagogues rely less than Christian churches on Sabbath collections, but emphasize instead annual membership dues, sales of High Holy Day seats and tickets, payments for Torah honors and fees for other religious services.

Annual Dues. Annual dues provide an important source of income for many synagogues, ranging recently, for example, from about 20 percent to 100 percent of annual income of Reform temples.[26] Historically, annual

[26] J. Feldman, H. Fruhauf & M. Schoen, *Temple Management Manual* Ch. 4 at 9 (1984). Where dues are not all-inclusive, additional funds are raised, for example, from the sale of High Holy Day seats or tickets.

dues were "fixed dues" per individual or family with rates set by the boards of trustees of individual synagogues.[27] In some Reform temples, the fixed fee system recently has been replaced by dues that vary with family income.[28]

High Holy Day Tickets. Analogous to Christian pew rentals, many synagogues charge separate fees for High Holy Day seats or sell High Holy Day tickets with admission often restricted to ticket holders.[29] Some congregations relate charges to "the number of, and in some cases the location of High Holy Day seats." *Temple Management Manual*, *supra*, Ch. 4 at 10. In 1982 typical fees for High Holy Day seats ranged from $200 to $2,000 and for High Holy Day tickets from $50 to $500. Harris, "The Squeeze on Churches and Synagogues" Money Magazine 97, 104, (April 1982).

[27] "[E]very membership unit was required to contribute the same amount of annual dues, regardless of composition (husband/wife/children), financial standing or ability." *Id. See also* H. Dobrinsky, *A Treasury of Sephardic Laws and Customs* 166, 204 (1986) (while Syrian Jews pay both "a regular membership fee" and purchase permanent seats in the synagogue, the annual fee in Spanish and Portuguese congregations entitles one to both "membership and a seat in the congregation").

What a member receives in exchange for annual dues, of course, varies among congregations. Many congregations, for example, include religious schooling in annual dues, while others levy separate charges "ranging from a modest book fee of a few dollars to one in the hundreds of dollars." *Temple Management Manual, supra*, Ch. 4 at 11. *See also* M. Sklare, "The Sociology of the American Synagogue," in *Understanding American Judaism* 94-95 (J. Neusner ed. 1975).

[28] *See Temple Management Manual*, Ch. 4 at 9 (The "congregation establishes a table of dues based on income levels . . . and each member is required to pay dues according to the plan.").

[29] *See, e.g.*, M. Sklare, *supra*, at 95-96:

> While daily services, Sabbath services, and festival services are open to all, the demand for seats on the High Holidays is so large that admission is commonly restricted to ticket holders. In some congregations tickets are distributed only to members while in other synagogues they are sold to the public, but at a higher price than the charge made to members.

"Auctioning" of Torah Readings. In certain synagogues the honor of reading the Torah (*"aliyot"*) traditionally has been sold, although the methods of auctioning and negotiating the payments for such religious honors vary among synagogues.[30] Some rabbis have urged changes to minimize disruptions to religious services from auctioning, "claiming that it made the synagogue look like a marketplace." Dobrinsky, *supra*, at 177.[31] Nevertheless, Torah readings remain an important fund-raising source for many synagogues.[32]

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[30] The following excerpt describes the practice in Jewish synagogues of Syrian descent:

> The *mizvot* (*aliyot* and other honors) are auctioned off in the synagogue for the holidays. Numbers such as 26 (which is the numerical equivalent of YKVK, the name of God), 101 (which is the numerical equivalent of the name Michael, the angel), and 202 (which symbolizes twice 101) are used in the auctioning. The auctioneer encourages the congregants to generously donate for the *mizvot* by stating, "And whoever gives more, God will give him more" . . . In some synagogues, they now discourage the process of auctioning the *mizvot*, and instead make arrangements prior to the holidays for these honors to be acquired in advance by members of the congregation. When there is more than one person vying for a particular honor, the matter will be negotiated in private.

H. Dobrinsky, *supra*, at 164.

[31] In synagogues of Moroccan descent, for example, the auction is conducted only twice a year and the person who buys the particular Torah reading for the six-month period has "the right to give it to any of his friends." Dobrinsky, *supra*, at 177. The biannual auction was in response to complaints by rabbis. Some congregations no longer auction Torah readings, but otherwise arrange for payments from individuals permitted this special participation in the Jewish religious service. *Id.* at 68. In Reform congregations, " auction of synagogue honors" disappeared in the 19th century "as alternatives were found for the revenues it raised." M. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* 170 (1988).

[32] *See* M. Zborowski & E. Herzog, *Life Is With People: The Culture of the Shtetl* 55 (1972 ed.):

> All readings are marked by some donations . . . . If . . . a man of substance has lagged in his contributions to the community welfare, one way of prompting him to open his pocket is to call him to the reading of the Torah. No one can refuse a call to the Torah . . . .

Fees for Religious Services. Like a variety of other religious organizations, synagogues sometimes use special fees to raise funds, such as special fees to participate in a Passover service and meal. *See Temple Management Manual, supra*, Ch. 4 at 11 (1984).

C. The Decisions Below Grant The IRS A License Selectively To Disallow Individuals' Deductions For Payments Solely To Participate In The Religious Services Of Their Faiths.

Neither the "form" or "structure" of the Church of Scientology's system for raising funds from its adherents, nor the nature, quality or value of the religious services received by members in return, provides a principled basis for distinguishing the payments at issue here from payments made by millions of religious Americans to the churches and synagogues of other religious denominations—payments for which the IRS consistently has allowed deductions under § 170. For example, annual dues to churches and synagogues explicitly are permitted deduction without any inquiry into the nature or the value of religious services received in return by the payors.[33] A.R.M. 2, 1 C.B. 150 (1919) and Rev. Rul. 70-47, 1970-1 C.B. 49. Despite their "rental agreement" form or "structure," and the individual benefits that obtain, the IRS always has allowed charitable deductions for payments for specific church pews. *Id.* Likewise, notwithstanding the "structure" of Mass stipends as fixed payments for specific religious services performed for the "intention" of the payor, the IRS specifically has allowed charitable deductions of such payments to a church. *See* Rev. Rul. 78-366, 1978-2 C.B. 241. Deductions also are

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[33] This contrasts with IRS disallowance, at least in part, of membership dues to secular charities where economic or secular benefits are received in return. Rev. Rul. 68-432, 1968-2 C.B. 104.

routinely permitted for High Holy Day tickets,[34] tithes,[35] payments in connection with Torah readings, fees for special religious services, such as Passover,[36] and other payments to participate in the religious services of churches and synagogues.[37] Now the IRS seeks a license

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[34] At least to one judge, High Holy Day tickets are "close to the line." *Foley*, 814 F.2d at 98 (Newman, J., dissenting).

[35] The instant litigation, of course, casts doubt on the continued deductibility of tithes to churches. *See, e.g.*, Deputy Assistant Attorney General Michael Durney, Address to the 24th Annual Washington Non-Profit Tax Conference, *Tax Notes Today*, March 4, 1988 (noting that the instant litigation is of concern to mainstream religions as well as smaller denominations, "especially those that strongly encourage tithing"). In fact, the form of payment in *Murphy v. Commissioner*, 54 T.C. 249 (1970), a case disallowing deduction for payments to receive adoption services, was equivalent to a tithe, an amount equal to ten percent of the taxpayer's income. *Murphy* was cited in *United States v. American Bar Endowment*, 477 U.S. at 117, and was relied upon by the appellate courts below. *See Hernandez*, 819 F.2d at 1217; *Graham*, 822 F.2d at 849.

[36] Under prior IRS interpretations of § 170, any excess of the amount paid over the value of a Passover meal would be deductible as a charitable contribution. Rev. Rul. 70-47, 1970-1 C.B. 49 and Rev. Rul. 67-246, 1967-2 C.B. 104. Under the interpretations of § 170 in the cases on review, if the IRS challenges participants' deductions, the taxpayers would have the burden of establishing whether, and to what extent, their payments exceeded the value both of the meal and of the religious sacrament of participating in the Passover service.

[37] In disallowing the individuals' deductions for payments to their Churches here, the Tax Court stressed what it labelled the "commercial" character of the churches' fund-raising methods, including such things as the churches' use of receipts for payments, their acceptance—indeed encouragement—of credit card payments, and the aggressive proselytization of the religion through such methods as free lectures, handouts and radio and newspaper advertisements. In sum, the Tax Court placed considerable emphasis on what it described as the goal of the church's financial offices of "making money." 83 T.C. at 578-79. In affirming the Tax Court's decision, these factors were also regarded as important by the Ninth Circuit, *Graham*, 822 F.2d at 847, but not

to select at will which of those payments it will allow to be deducted and which it will not.

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by the First, Second, Fourth, or Eighth circuits. (The Tenth Circuit's position on this issue is ambigious.)

Practices such as the use of bank credit cards are quite common among many religious and other charitable organizations. Commentators have observed that many churches encourage charge-account giving as well as automatic periodic withdrawals from bank accounts, and often suggest that such methods may increase donations. *See, e.g.*, R. Knudsen, *New Models for Financing the Local Church: Fresh Approaches for the Computer Age* (1985); H. de Mena, Jr., *How to Increase Parish Income* 55-57 (1982). The use of credit cards by charities has become so common that a decade ago the IRS ruled that deductible contributions may be made by bank credit card. Rev. Rul. 78-38, 1978-1 C.B. 67.

Modern business techniques have never been held to compromise deductibility of donations. The discussion of commercial techniques in *United States v. American Bar Endowment*, 477 U.S. 105 (1986), has no application to the cases on review. *American Bar Endowment* involved a "trade or business" of selling insurance held by this Court to be "unrelated" to the organization's tax-exempt purpose. Here payments to participate in the core religious practices of a tax-exempt church are at issue. There is no case, apart from the instant contest, where a court has relied on the "commercial" character of a tax-exempt organization's fund-raising efforts to disallow deductibility of a charitable contribution under § 170. Commercial-type fund-raising techniques are legally irrelevant to this case.

By stipulating that the recipients of the payments at issue here are tax-exempt churches under § 501(c)(3) of the Internal Revenue Code, the government has necessarily agreed that each Scientology church that received the donations at issue "engages primarily in activities which accomplish one or more of [the] exempt purposes specified in § 501(c)(3), [and that no] more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Treas. Regs. § 1.501(a)(3)-1(c)(1). The Eighth Circuit recognized that the "commercial" character of the church's fund-raising efforts is immaterial in light of the government's stipulation that the payments were made to a religious organization exempt from tax under I.R.C. Section 501(c)(3) and remarked that if the payments by the taxpayers here "were not contributions then 'the passing of the collection plate in church would make the church service a commercial project,'" *Staples*, 821 F.2d at 1325-26 & 1327 (quoting *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943)).

As the foregoing summary of practices of various denominations demonstrates, Scientology, although a new and small denomination, has much in common with both traditional Western faiths and Buddhism. The practices singled out by the IRS for taxation here are comparable in many ways to practices in other faiths. For nearly seven decades the IRS consistently has allowed deductions for payments by individuals to participate in the religious sacraments of their faith regardless of the form of the payment or the nature or value of the religious service provided in return. Without any change in its administrative rulings or regulations, the IRS now urges this Court to endorse a dramatic reversal of its prior interpretations of § 170. In addition to the inevitable entanglement with religion that would result (see Section III, *infra*), the rule of law that the IRS now urges on this Court has potentially severe financial implications for all religious denominations.[38] The IRS may well be tempted on occasion selectively to disallow deductions for payments to religious organizations for political or philosophical reasons or even simply to increase federal revenues. This would be a poor substitute—indeed one that contravenes the First Amendment—for the guarantee of neutrality across religious denominations of prior IRS in-

[38] Because there is no direct government funding for religious activities, religious organizations depend more on contributions from members than other tax-exempt organizations. Like most churches and other religious organizations, donations from adherents provide the major source of funds to Scientology Churches. *Graham*, 83 T.C. at 578. Religious organizations routinely receive in excess of 90 percent of all revenues from contributions. C. Clotfelter, *Federal Tax Policy and Charitable Giving* 10-11 (1988).

In terms of sheer magnitude, religious organizations are by far the most important category of recipients of individual contributions. In 1982, for example, contributions to religious organizations amounted to $28 billion and accounted for 47 percent of total gifts to charities, with education and health organizations the next largest categories, each receiving 14 percent of the total. *Id.* at 10. This has long been a consistent pattern. *Id.* Moreover, econometric evidence suggests that religious giving is as tax sensitive as other charitable giving. *Id.* at 65-66.

terpretations of § 170 that allow without question deductions for payments by individuals to participate in the religious services of their faith.

II. THE DECISIONS BELOW IMPROPERLY REVERSE NEARLY SEVEN DECADES OF CONSISTENT IRS INTERPRETATIONS OF § 170 THAT ALLOW DEDUCTIONS FOR PAYMENTS MADE BY INDIVIDUALS TO PARTICIPATE IN THE RELIGIOUS SERVICES OF THEIR FAITHS.

The courts below that have denied deductions for the donations at issue here have grounded their decisions on the absence of explicit language in § 170 distinguishing payments to churches for religious services from payments to tax-exempt organizations for commercial or secular goods and services. Finding no explicit statutory guidance, these courts extended *United States v. American Bar Endowment*, 477 U.S. 105 (1986)—a case denying claimed charitable deductions for purchases of insurance—to disallow deductions here.[39] *Hernandez*, 819 F.2d at 1216-18; *Graham*, 822 F.2d at 849; *Christiansen*, 843 F.2d at 420; *Miller*, 829 F.2d at 503.[40]

Such an extension of *American Bar Endowment* overturns the fundamental distinction, established by seventy

[39] *American Bar Endowment* involved an organization (ABE) that conducted a "trade or business" unrelated to any charitable activity—the provision of insurance to its members. ABE gave charitable organizations the excess of the members' premium payments over the cost of providing the insurance. The only question in the case arising under § 170 was whether the excess payment was a deductible contribution by the members. This Court held the payments not deductible because the members had failed to demonstrate that they could have purchased comparable insurance policies elsewhere for less than the full amount that they paid. 477 U.S. at 118. ABE subsequently restructured its insurance program in a way that made the amounts deductible under § 170. Ltr. Ruling No. 8725028, March 20, 1987.

[40] The Tax Court's decision below preceded this Court's decision in *American Bar Endowment*. The *Hernandez* opinion notes that the Tax Court "anticipated and correctly applied the *American Bar Endowment* test." 819 F 2d at 1218 n.9.

years of consistent IRS practice never questioned by Congress, that always has allowed deductions for payments by individuals to tax-exempt churches to participate in the sacraments of their faith, while denying deductions for payments to tax-exempt organizations in return for secular goods or services. In so doing, the decisions on review disregard the support for this enduring administrative interpretation in the statute itself, as well as in the basic policies, legislative background and history of § 170.

The decisions below contravene the "well established canon of statutory construction" that "a court will not look merely to a particular clause in which general words may be used, *but will take in connection with it the whole statute . . . and the objects and policy of the law.*" *Bob Jones Univ. v. United States*, 461 U.S. 574, 586 (1983) (quoting *Brown v. Duchesne*, 19 How. 183, 194 (1857)) (emphasis in original). Further, congressional refusal to alter or amend § 170 surely implies acquiescence in and "ratification by implication" of the IRS's well-known administrative position. *See Bob Jones Univ.*, 461 U.S. at 599. Even given the traditional reluctance to attribute significance to congressional inaction, the IRS's consistent administrative interpretations—announced virtually contemporaneously with the 1917 enactment of the charitable deduction, reaffirmed by that agency half a century later, and never questioned by Congress—are, at a minimum, "of considerable significance in determining the intended meaning of the statute." 461 U.S. at 619 (Rehnquist, J., dissenting).[41]

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[41] These administrative pronouncements have exceptional weight in the tax area, where the Internal Revenue Code is continually involved in a process of re-enactment and revision and where congressional oversight committees exercise constant supervision. This scrutiny assures that Congress is aware of such long-standing interpretations and has decided to leave them in place. *See, e.g., United States v. Correll*, 389 U.S. 299, 305-07 (1967); *Fribourg Navigation Co. v. Commissioner*, 383 U.S. 272, 283 (1966); *United States v. Leslie Salt Co.*, 350 U.S. 383, 395-96 (1956); *Helvering v. Winmill*, 305 U.S. 79, 83 (1938); Brown, *Regulations, Reenactment, and the Revenue Acts*, 54 Harv. L. Rev. 377, 379 (1941).

In addition, the decisions on review create serious constitutional problems. Those courts that ground their holdings in the structure of the transactions[42] not only contradict the fundamental principle of tax adjudication that requires the *substance*, not the form, of a transaction to govern,[43] but would introduce into the tax law distinctions among religions based upon fund-raising practices.[44] This violates the constitutional requirement of neutrality among religious denominations and excessively entangles the government in religious affairs. See Section III, *infra*.

The decisions on review disregarded the special constitutional status of religion, improperly treating payments to a church to participate in sacraments as identical to the purchase of commercial products and services. A court must not construe an act of Congress to violate the Constitution "if a construction of the statute is fairly possible by which the question may be avoided,"

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[42] Three of the affirming courts explicitly based disallowance of the deductions on the "structure," "external features," or "circumstances" of the "transaction." *Graham*, 822 F.2d at 848-49; *Christiansen*, 843 F.2d at 420; *Miller*, 829 F.2d at 505.

[43] *See, e.g., United States v. Phellis*, 257 U.S. 156, 168 (1921) (treating the superiority of substance over form as a well-settled principle of tax adjudication).

[44] Variations in church fund-raising practices make untenable these courts' departure from prior practice in relying on the "structure" or "external features" of the payments to disallow deductions. As Section I details, the church's practice here in substance is not materially different from more traditional religious organizations' use of—and the IRS's allowance of deductions for —fixed payments on a periodic or annual basis. As the Eighth Circuit recognized, a fixed payment schedule simply may be a more effective means of fundraising for a church that provides individualized, rather than congregational, services. *Staples*, 821 F.2d at 1327-28, Although the Tax Court acknowledged that the fixed payment schedule, like the tithe, has an historical linkage to the income levels of the church community and is based on church doctrine, it nevertheless found that the payments here were for a *quid pro quo* and thus nondeductible. This elevation of form over substance is an improper interpretation of § 170.

United States v. Clark, 445 U.S. 23, 27 (1980), or indeed "if any other possible construction remains available." *NLRB v. Catholic Bishop*, 440 U.S. 490, 500 (1979).[45] Not only is such a construction "available" and "fairly possible," it has been the IRS's interpretation for seven decades.

A. The IRS's Long-Standing Distinction Between Payments For Religious And Secular Benefits Is Sound.

The distinction between religious benefits, on the one hand, the receipt of which does not disqualify charitable deductions, and benefits sold in the secular marketplace, on the other hand, finds support in the legislative history of § 170 and its fundamental policies as well as in prior administrative pronouncements by the IRS.

In the legislative history of the 1954 Code, Congress indicated that the phrase "contribution or gift" as used in § 170 is limited to "those contributions which are made with no expectation of a *financial return commensurate with the amount of the gift.*" H.R. Rpt. No. 1337, 83rd Cong. 2d Sess. 44A (1954) (emphasis added). *Accord* S. Rep. No. 1622, 83rd Cong. 2d Sess. 196 (1954).

[45] The holdings of the courts below concededly raise "serious practical and constitutional difficulties," and "difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *Hernandez*, 819 F.2d at 1218; *Christiansen*, 843 F.2d at 420. They ignore the admonition of this Court that where a particular interpretation of a statute raises serious constitutional issues, a court should not attribute that interpretation to Congress unless "the affirmative intention of the Congress [to do so is] clearly expressed." *Catholic Bishop*, 440 U.S. at 500, 507. The dissenting Justices in *Catholic Bishop* rejected the majority's canon of statutory interpretation and instead would have required that a reading of a statute sensitive to religion be "fairly possible." 440 U.S. 508-11 (Brennan, J., dissenting). *See also Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986) (federal statutes are to be construed to avoid serious doubts of their constitutionality); *Morrison v. Olson*, No. 87-1279 Slip Op. (U.S. June 29, 1988) (It is the duty of federal courts to construe a statute in order to save it from constitutional infirmities). The IRS's interpretation for seven decades obviously meets even the "fairly possible" standard.

The IRS summarized this rule in Rev. Rul. 76-185, 1976-1 C.B. 60 at 60-61 (emphasis added):

> For purposes of section 170 of the Code, a contribution or gift is a voluntary transfer of money or property made by the transferor without receipt or expectation of a *financial or economic benefit commensurate with the money* . . . transferred. See Section 1.170A-1(c)(5) of the Income Tax Regulations; *H.R. Rep. No. 1337*, 83rd Cong., 2d Sess. A44 (1954); *S. Rep. No 1622*, 83rd Cong, 2d Sess. 196 (1954) If the transferor receives, or can reasonably expect to receive, a *financial or economic* benefit that is commensurate with the money . . . transferred, no deduction under section 170 is allowable. . . . However, if the transferor receives, or can reasonably expect to receive, a *financial or economic benefit* that is substantial but less than the amount of the transfer, than [sic] the transaction may involve both a purchase and a gift, and a *deduction* under section 170 *would only be allowable*, assuming the requirements in that section are otherwise met, *for the excess of the amount transferred over the amount of the financial or economic benefit received* or reasonably expected to be received by the transferror.

Each of the prior cases denying charitable deductions to a qualified tax-exempt recipient involves a benefit that conforms to this definition of "financial" or "economic," *viz.*, goods or services provided in the secular marketplace.[46] This prevents tax-exempt organizations from gaining an unfair competitive advantage by providing taxpayers with secular goods or services, like insurance paid for through tax deductible contributions.[47] *See*

[46] The dictionary illustrates the linkage between secular services and the phrase "economic benefit," defining "economic" as "of or pertaining to the production, development, and management of material wealth, as of a country, household or business enterprise." *The American Heritage Dictionary of the English Language* 413 (1981).

[47] *See, e.g., United States v. American Bar Endowment*, 477 U.S. 105 (1986) (insurance); *Sedam v. United States*, 518 F.2d 242 (7th Cir. 1975) (admission to an old-age home); *Feistman v. Commis-*

Staples, 821 F.2d at 1327. In addition, this practice precludes deductions disguised as charitable contributions for payments for secular goods and services that otherwise would not be deductible.[48]

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sioner, 30 T.C.M. (CCH) 590 (1971) (party following a bas mitzvah); *Murphy v. Commissioner*, 54 T.C. 249 (1970) (adoption services) (explicitly distinguishing the personal expense of adoption from a payment to participate in religious services).

The Tax Court relied on only two cases, *DeJong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962) and *Haak v. United States*, 451 F. Supp. 1087 (W.D. Mich. 1978), to support its conclusion that a payment for religious services was a *quid pro quo*. Both cases involved payments made to church schools providing accredited secular education to the taxpayers' children. *See also Winters v. Commissioner*, 467 F.2d 778 (2d Cir. 1972); *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972).

The IRS distinguished parochial education from religious services in a General Counsel Memorandum which explains that "essentially secular activities," including education, stand on a far different footing than "an inherently religious program." G.C.M. 35986 (Sept. 13, 1974):

> The state is not free to impose a tax on the conduct of an inherently religious program. It is nonetheless clear that the essentially secular activities with which we are here concerned fall in a distinctly different category.
>
> In view of the fact that the Free Exercise Clause of the First Amendment provides no special sanctuary for any conduct other than inherently religious activities, we think the Service should continue to hold that whenever an educational institution comparable to the petitioner in [*Bob Jones University v. Simon*, 416 U.S. 725 (1974)] restricts its enrollees on a racially restrictive basis, such action will bar it from recognition as a charity for Federal tax exemption and deduction purposes without regard to whether or not such restriction may be founded on a religious conviction.

The distinction between educational and religious activities was noted by this Court in its subsequent opinion in the Bob Jones University controversy: "We deal here only with religious *schools*—not with churches or other purely religious institutions. . . ." *Bob Jones Univ. v. United States*, 461 U.S. at 604 n.29 (emphasis in original).

[48] *See, e.g.*, § 262, which denies deduction generally for personal, living or family expenses. The Committee Report on the 1954 Code points to the provision of medical care as a specific example of an economic benefit that would result in the denial of a charitable contribution deduction under § 170. H.R. Rept. No. 1337, *supra*. This bars taxpayers from subverting limits on medical deductions under § 213 by disguised charitable contributions. Likewise, allowing deductions under § 170 for educational expenses would undermine the education expense tax regulations that allow deductions only for education that serves vocational or business purposes. *See* Treas. Regs. § 1.162-5.

In its traditional distinction between economic, financial or secular benefits and religious benefits, the IRS properly relied upon the law of charitable trusts, which recognizes that despite a limited number of direct beneficiaries, payments "for the advancement of religion" are charitable. *See, e.g.*, 4 A. Scott, Law of Trusts § 375.1 at 2940 (1967).[49] Specifically, the IRS has held that religious benefits to the individual are "incidental," even when private Masses or the collection of a particular family's genealogical information are undertaken for religious purposes. Revenue Ruling 71-580, 1971-2 C.B 235, 236, states the IRS's reasoning:

> The law of charity generally recognizes that the saying of mass or the conduct of similar religious observances under the tenets of a particular religion are a spiritual benefit to all the members of that faith and to the general public. Any private benefit to a given family or individual that may result is regarded as merely incidental to the general public benefit that is served.

The Tax Court also has recognized that individual religious benefits are by law treated as "incidental." *Murphy v. Commissioner*, 54 T.C. 249, 253 (1970) ("[T]he benefits [of contributions to churches] are merely incidental to making the organization function according to its charitable purposes.")

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[49] *See also, e.g.*, Scott, *supra*, § 371.5 at 2892, noting that the benefits of a Mass for an individual "are not confined to the particular soul but extend to the other members of the church and to all the world, according to the doctrines of the Roman Catholic Church." This Court has recognized the relevance of the law of charitable trusts to interpretations of § 170. *Bob Jones Univ. v. United States*, 461 U.S. at 589 n.13.

Both the Eighth and the Second Circuits applied this traditional analysis, holding that the individuals' benefit from religious services here is incidental to the general public benefit served by religious pluralism, stating:

> Religious observances of any faith are considered under the law of charity to be of spiritual benefit to the general public as well as to the members of the individual faith, with the *private benefit to individual participants being merely incidental* to the broader good that is served.... *The public benefit from religion remains and predominates regardless of whether church doctrines provide for traditional congregational worship or individual worship as in Scientology or whether donations are voluntary or fixed.*

Staples, 821 F.2d at 1326 (emphasis added). *See also Foley*, 844 F.2d at 96 (citing Rev. Rul. 71-580) ("Donations related to participation in religious observances ... have not been regarded as yielding specific private benefits to the donor, who is considered only an incidental beneficiary, the primary beneficiaries of the observances being the members of the faith and the general public.").[50]

Section 170 should be interpreted as it has been for the past 70 years—to distinguish religious services from

[50] Indeed, prior to this litigation, no tribunal had ever suggested that the benefits of payments made to receive or participate in an act of religious worship were not incidental and therefore deductible. *See, e.g., Estate of Carroll v. Commissioner*, 38 T.C. 868 (1962) (deduction allowed for cost of repairing Roman Catholic chapel on taxpayer's property, although value of property was clearly enhanced); *Sims v. Commissioner*, 10 T.C.M. (CCH) 608 (1951) (deduction allowed for contributions to church "which [taxpayers] attended"); *Lobsenz v. Commissioner*, 17 B.T.A. 81, 82 (1929) (deduction allowed for contribution "to a synagogue of which [taxpayer] was a member"); Rev. Rul. 78-366, 1978-2 C.B. 241 (estate tax deduction allowed for bequest to church to say regularly scheduled Masses for members of decedent's family).

secular or commercial services.[51] The Eighth Circuit in *Staples* recognized this distinction, finding that Congress intended under § 170 to treat religious services differently from secular, economic services. 821 F.2d at 1326-27. *Accord Foley*, 844 F.2d at 96-97.[52]

Nearly 70 years of tax administration, unquestioned by Congress, have confirmed the wisdom and practicality of this distinction. The IRS has always been able to distinguish a tithe for adoption services from a tithe for admission to a Mormon temple; a ticket for the theater from a ticket for Jewish High Holy Day services; dues for membership in an aerobics club from dues for membership in a church; and payment for seats in a football or basketball arena from seats in a church pew.

B. The Decisions Below Require IRS Valuation Of Religious Services—A Task That Is Both Impractical And Unconstitutional.

United States v. American Bar Endowment, 477 U.S. 105, involved claimed deductions for insurance premiums.

[51] This interpretation would allow deduction of the payments at issue here and is wholly consistent with prior case law denying charitable contribution deductions for: (1) payments to a church for use of facilities for a wedding, *Summers v. Commissioner*, 33 T.C.M. (CCH) 695 (1974); (2) payments to a religious home for the aged to care for the payor's father, Rev. Rul. 58-303, 1958-1 C.B. 61 (*Cf. Wardell v. Commissioner*, 301 F.2d 632 (8th Cir. 1962) (allowing such deductions)); (3) payments for raffle tickets, *Goldman v. Commissioner*, 388 F.2d 476 (6th Cir. 1967); and (4) payments to a synagogue for a party following a religious ritual, such as a bas mitzvah, *Feistman v. Commissioner*, 30 T.C.M. (CCH) 590 (1971).

Each of the foregoing services could have been provided by a secular commercial enterprise instead of the religious organization. In contrast, religious services are not provided by any secular organization.

[52] The fact that Congress has shown special sensitivity to churches throughout the Internal Revenue Code (to take but one example, in § 7611 imposing special restrictions on IRS audits of churches to minimize entanglement between government and religion) also supports the interpretation of § 170 urged by the taxpayers here.

In disallowing the deductions, this Court relied on the "two-part test" of Rev. Rul. 67-246, 1967-2 C.B. 104, stating:

> First the payment is deductible only if and to the extent it exceeds the market value of the benefit received. Second, the excess payment must be "made with the intention of making a gift." 1967-2 Cum. Bull. at 105.
>
> The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return.

477 U.S. at 117-18.

To qualify for charitable deductions, taxpayers have long been required to demonstrate the difference between the amount of the payment for a secular good or service and its fair market value.[53] Here, however, the petition-

[53] Even in the secular context, the lower courts disagree about the existence, propriety and meaning of any requirement under § 170 that taxpayers must show that deductible payments to charitable organizations were made "with the intention of making a gift." Some circuits have appropriated a test developed in connection with the exclusion of gifts from income under § 102 of the Code, *viz.*, that the payment must be the product of "detached and disinterested generosity." *Commissioner v. Duberstein*, 363 U.S. 278 (1960). The "detached and disinterested generosity" test was applied by the Ninth, Fourth, and Tenth Circuits to find that the payments at issue here are not deductible although each of those courts looked to the "structure" or "external features" of the transaction as a basis for inferring intention. *Graham*, 822 F.2d at 848-49; *Miller*, 829 F.2d at 502; *Christiansen*, 843 F.2d at 420. The First Circuit has generally rejected this test. *See Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972) and *Crosby Valve & Gauge Co. v. Commissioner*, 380 F.2d 146 (1st Cir. 1967) (expressing dissatisfaction with this test).

This test is not appropriate in the context of contributions to churches in exchange solely for religious services. The tax code cannot reasonably be interpreted to disallow charitable deductions for those who make payments to churches in the belief that what they receive in return—perhaps the hope of salvation or a purer soul—is more valuable than what they gave away, and, at the same time, to allow deductions for those parishioners who make payments to churches skeptical of the value of any religious benefits

ers received in "return" not a commercial economic product like life insurance, but instead participation in religious worship, which has no calculable financial or economic value.

Nevertheless, the courts below held that *American Bar Endowment* requires a determination of the monetary value of religious services received in return for a parishioner's payments. *Graham*, 822 F.2d at 849; *Miller*, 829 F.2d at 503; *Christiansen*, 843 F.2d at 420-21; *Hernandez*, 819 F.2d at 1216 ("The taxpayer . . . must at a minimum demonstrate that he purposely contributed money or property *in excess of the value of any benefit he received in return*") (quoting *American Bar Endowment*, 477 U.S. at 118 (emphasis added)). *Contra*, *Staples*, 821 F.2d at 1328; *Foley*, 844 F.2d at 97.

The Ninth Circuit concluded not only that the value of the religious benefit received by Scientologists is "measurable," but that its value could be determined "simply by looking at the amount of money that [petitioners] were willing to pay." 822 F.2d at 849-50. The court blithely characterized the payments as having occurred in a "market setting" and dismissed as "not significant" the fact that "the benefit may have had value only to religious adherents." *Id.* at 849. Such a conclusion was correctly rejected by the Eighth Circuit in *Staples*:

> [T]hese stipulations foreclose any reliance on the Church of Scientology's fixed donations as representing the value of its essential religious practices. Under the stipulations the fixed donations are not market prices set to reap the profits of a commercial moneymaking venture; rather, the Church of Scientology is a bona fide church which selected fixed

that flow in return. The reliance on this test by the Fourth, Ninth, and Tenth Circuits should be rejected by this Court, notwithstanding the *American Bar Endowment* suggestion that the intention of the taxpayers was important to that case. 477 U.S. at 117-18.

donations as its mechanism for raising funds from its members.

821 F.2d at 1327-28.[54]

When payments are made for religious services, important First Amendment problems arise that simply are not at stake when this legal standard is applied to secular services. Indeed, the First Circuit explicitly acknowledged that "constitutional difficulties," such as "the problem of excessive entanglement in the affairs of a religious institution," may arise where the valuation of religious practice is at issue. *Hernandez*, 819 F.2d at 1218.[55]

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[54] Furthermore, automatic valuation of services provided by a charitable organization as equivalent to the amount paid—as done by the court below—is contrary to IRS rulings and case law. *See, e.g.*, Rev. Rul. 67-246, 1967-2 C.B. 104; *American Bar Endowment*, 477 U.S. at 118; *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972) (disallowing $640 of $900 claimed as a deduction for educational benefits); *DeJong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962) (disallowing $400 of $1,075 claimed as a deduction for educational benefits).

[55] Notwithstanding the First Circuit's recognition of the significant constitutional problems created by its decision, that court nevertheless offered three methods for valuing religious services: (1) the price set by the service providers, (2) the prices set by providers of similar services, or (3) the costs of providing the service. *Hernandez*, 819 F.2d at 1217. Each of these methods faces "practical and constitutional obstacles." The first method has been discussed *supra*. The second suggestion—that religious services may be valued by reference to "the price set by providers of similar services"—is unworkable as well as unconstitutional. In the case of religious services, there are no "similar services" whose prices may be ascertained. Not only are there no prices to which comparison can be made, but the very notion of comparing relative values of religious services impermissibly entangles church and state both through the valuation of religious services and through the creation of denominational preferences. *See Walz v. Tax Commission*, 397 U.S. 664, 674 (1970); *Larson v. Valente*, 456 U.S. 228, 234 (1982); and Section III, *infra*.

Finally, valuing services based on the "costs of providing the services," *Hernandez*, 819 F.2d at 1217, also would create constitutional difficulties. Determining the cost of providing services would require deep intrusions into a church's finances and operations, creating excessive and unconstitutional church-state entanglement. *Aguilar v. Felton*, 473 U.S. 402 (1985).

The *Staples* court remarked upon the unprecedented nature of the proposals for valuation made by the First Circuit:

> No case to which we have been cited values in that manner the strictly religious practices presented by the stipulations in this case . . . . Spiritual gain to an individual church member cannot be valued by any measure known in the secular realm.

821 F.2d at 1327. *See also*, *Foley*, 844 F.2d at 97 ("[T]here is no way of measuring spiritual or religious benefits.")

III. DENIAL OF DEDUCTIONS UNDER § 170 VIOLATES THE RELIGION CLAUSES OF THE FIRST AMENDMENT.

Both because of the historic futility of attempts to impose religious orthodoxy, *Wallace v. Jaffree*, 472 U.S. 38, 54 n.39 (1985), and because of the inherent right of all people to practice their beliefs, whether or not they appear unpersuasive, distasteful, or even ridiculous to the majority of the population, *see* J. Madison, Memorial and Remonstrance Against Religious Assessment (1785), the religion clauses of the First Amendment were enacted to protect the believer from "the powers that are." *See* J. Noonan, *The Believer and the Powers That Are* (1987). They stand for the propositions that religious pluralism is essential to the welfare of the nation and that all citizens are entitled to protection from the imposition of an orthodoxy formulated by the government.

The constitutional protection of religion ensures that religious choices are made freely, *Wallace v. Jaffree*, 472 U.S. at 53, and without regard to political consequences, *Lynch v. Donnelly*, 465 U.S. 668, 689 (1984) (O'Connor, J., concurring), including the denial of otherwise avail-

able government benefits, *Hobbie v. Unemployment Appeals Comm'n*, 107 S.Ct. 1046 (1987).

The economic relations between believers and their religious institutions are as much a part of the religious autonomy protected by the separation of church and state as any other aspect of religious life. *See, e.g., Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (protecting the right to solicit funds). Indeed, it was largely to extricate government from the business of fundraising for churches that the establishment clauses of the state and federal constitutions were enacted. M. Howe, *The Garden and the Wilderness* 1-32 (1965).[56]

In light of the goals of the religion clauses, the long-standing practice of the IRS—which allows deductions for both fixed payments and individually determined amounts donated to religious organizations—is a valid accommodation of the religious interests of individual believers. This policy also avoids the imposition of or incentives to governmentally preferred means of religious fundraising. *See Corporation of the Presiding Bishop v. Amos*, 107 S.Ct. 2862 (1987); *Walz v. Tax Commission*, 397 U.S. 664 (1970). The deviation proposed by the IRS here inevitably would entangle government impermissibly in the relationship between adherents and their churches. Further, applying § 170 either to allow deductions for payments for congregational worship, but not for individualized worship, or to allow deductions for donations the amounts of which are fixed by the individual, but not for amounts fixed by the church or synagogue, creates an unconstitutional denominational preference.

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[56] As Robert Cover put it: "The religion clauses of the Constitution seem to me unique in the clarity with which they presuppose a collective, norm-generating community whose status as a community and whose relationships with the individuals subject to its norms are entitled to constitutional recognition and protection." *The Supreme Court 1982 Term Forward*: Nomos and Narrative, 97 Harv. L. Rev. 4, 32 n.94 (1983).

A. The Taxation Of Payments Made For Exclusively Religious Services Entangles Government In The Relationship Between Believers And Religious Institutions.

The establishment clause encompasses three main requirements, summarized in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971):

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Educ. v. Allen*, 392 U.S. 236, 243 (1968); finally, the statute must not foster "an excessive government entanglement with religion." *Walz v. Tax Commission*, 397 U.S. 664, 674.

The third element of this test is plainly violated by the decisions on review.[57] Generally, an impermissible entanglement exists whenever administration of a law or government program requires ongoing or invasive supervision of religious activity. *Aguilar v. Felton*, 473 U.S. 402, 412-14 (1985); *Walz v. Tax Commission* 397 U.S. 664 (1970).

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[57] Although the interpretation of § 170 proposed by the IRS in these cases arguably has a secular purpose, the second prong of the *Lemon* test may also apply to this case. As Justice O'Connor explained in her concurrences in *Amos*, 107 S.Ct. at 2873-75, *Jaffee*, 472 U.S. at 67, and *Lynch v. Donnelly*, 465 U.S. 668, 687-89 (1984), this test focuses on whether government action sends a message to adherents of a particular faith:

> The second ... infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

Lynch, 465 U.S. at 688. The decision to abandon seven decades of uniform practice, which has never been formally altered by the IRS or questioned by Congress, to tax fixed donations to this church, conveys the inescapable message that denominations that worship individually or that require payments for admission to religious services are disfavored religious groups.

The valuation of religious services creates just such a threat of IRS supervision of religious beliefs and practices. The Tax Court explicitly recognized the exclusively religious nature of "auditing" and the relationship of the Church's fund-raising practices to religious doctrine.[58] Thus, the IRS has trespassed in an area reserved for untrammeled religious activity. *Lemon v. Kurtzman*, 403 U.S. at 614 ("[T]he objective [is] to prevent, as far as possible, the intrusion of either [government or religion] into the precincts of the other."). A church's conduct of its central form of worship lies at the heart of the precinct of faith.

In *Walz*, this Court upheld property tax exemptions for religious organizations, because taxation would result in "a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize." 397 U.S. at 674. The prospect of "tax valuation," the Court held, further justified the decision not to tax. *Id.* The traditional practice of the IRS—that pew rents, annual dues, and other fixed donations are deductible—avoids the entanglement envisioned in *Walz*.[59] The departure from that policy urged here demands the very

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[58] There is no question that the activities at issue here take place in the quintessentially sectarian environment. To the extent, therefore, that the entanglement prong of the *Lemon* analysis has been limited to "pervasively sectarian" contexts, *see Bowen v. Kendrick*, Nos. 87-253, 87-431, 87-462, 87-775, Slip op. (U.S. June 29, 1988), the valuation of religious benefits still presents a classic example of impermissible entanglement. As Justice Blackmun emphasized in his dissent in *Bowen v. Kendrick*, "the question whether a government program leads to an excessive government entanglment with religion, . . . is and remains a part of the applicable constitutional inquiry." *Id.* at — (citation omitted).

[59] The fact that the entanglement occurs first between the IRS and individual believers and secondarily with religious institutions does not lessen the pervasiveness, and the resulting unconstitutionality of the entanglement. *See Grand Rapids School Dist. v. Ball*, 473 U.S. 373 (1985) (invalidating government program because supervision of teachers would necessitate entanglement in religion).

kinds of evaluation of religious benefits that *Walz* warned against.

In addition to the unconstitutional valuation of religious services, further entanglement will result from IRS interpretations of religious doctrine necessary to administer the tax. In Scientology, the Doctrine of Exchange dictates that inflow and outflow be maintained in proper proportion; the Tax Court found that the Church applied that religious doctrine in the fund-raising practice at issue here. 83 T.C. at 577. In other faiths, the financial commitments of members may also be grounded in religious doctrine or tradition. *See* Section I, *supra*. Tax differences among religious adherents may not constitutionally depend on whether tithing is "mandatory" or whether a synagogue includes its High Holy Day tickets in its annual dues or sells them separately, or whether under canon law Mass stipends more closely approximate a bilateral contract or a voluntary offering.[60]

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[60] Mass stipends apparently were a *do ut facias* contract under the 1917 Canon Law but are not under the 1983 Canons. *See* J. Coriden, T. Green & D. Heintschel, *The Code of Canon Law: A Text and Commentary* 668 (1985). Notwithstanding recent changes, many aspects of the 1917 Code remain unchanged. *Id.* at 668-72. Punishment for priests who accept lower stipends than those set by the diocese is a complex matter of church law. *See* Keller, *supra*, at 97:

> What punishment can a Bishop licitly inflict upon those who solicit stipends at a lower rate than the diocesan statutes permit? Canon 2408 does not answer the question, because that canon refers to Canon 1507, but not to Canon 832. Nor does Canon 2324 apply; for it refers only to Canons 827, 828 and 840. The answer is found in the "blanket clause," which covers a multitude of crimes: Canon 832 is sanctioned by Canon 2222, which states that ecclesiastical Superiors can inflict a suitable punishment for any transgression against any canon in the Code.

To the extent that deductibility of fixed payments is made to turn on whether and how fixed payments are enforced by the church or synagogue, government involvement in tangled and often disputed areas of religious law becomes inevitable.

Such inquiries constitute a prohibited invasion of religious practices and doctrine by government. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). Exegetical battles would inevitably occur if deductibility under § 170 were to turn on the "structure" of the transaction, as held below. For example, suppose the government determines that a payment of funds, say a tithe, results in a spiritual *quid pro quo*, and therefore is not deductible. To encourage tithing while avoiding the loss of deductions for adherents, the religious group might declare erroneous the government's interpretation of its doctrines, or even alter its fund-raising practices. To avoid such controversies, the establishment clause prohibits government evaluation of sacred texts. *See, e.g., United States v. Ballard*, 322 U.S. 78 (1944).

B. Denial Of Deductions For Fixed Donations Creates An Unconstitutional Denomination Preference.

Even assuming *arguendo* that scrutiny of religious doctrine does not in itself unconstitutionally entangle government with religion, denial of a government benefit, such as a tax deduction, based on the content of religious doctrine or the mode of church worship, establishes a denominational preference among religions, contrary to the benevolent neutrality required by the religion clauses. *Larson v. Valente*, 456 U.S. 228 (1982).

The Ninth Circuit distinguished Scientologists from parishioners of other churches on the ground that individual Scientologists are the "direct and primary beneficiar[ies]" of religious sacraments, whereas the public is considered to be the "primary beneficiary" of the sacraments of other faiths. *Graham*, 822 F.2d at 850. The court relied on a Scientology publication that states: "The benefits obtainable from Church services . . . are personal and are experienced by the individual." *Id.* The court's holding therefore permits the IRS to disallow deductions based upon either the nature of the religious services or the content of representations made by the religious organization to its members. Disallowing deductions for payments for services that are provided, in accordance with church scripture, ¶¶ 14, 15, JA 31, in a "personal" rather than a congregational setting places a heavy burden on the central practice of Scientology.[61]

The Tax Court also found that the "fixed donation" system implements a sincere religious belief, the Doctrine of Exchange. 83 T.C. at 577. If petitioners and their Church abandoned scripturally mandated one-to-one religious services in favor of congregational services and their religiously based method of fundraising in favor of dues or tithes, they apparently would not be denied deductions.

The First Amendment, however, prohibits such government pressure to abandon religious tenets. Such distinctions among religions violate the non-discrimination principles of the establishment clause. By artificially elevating the form over the religious nature of such payments, the courts below establish a tax preference for religious groups that do not specify membership costs.

A similar denominational preference was held unconstitutional in *Larson v. Valente*, 456 U.S. 228 (1982) (invalidating state regulation of religious organizations that solicit more than 50% of funds from nonmembers).

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[61] There is no question that denial of a deduction imposes a burden on the individual taxpayer. As in *Hobbie v. Unemployment Appeals Comm'n*, 107 S.Ct. 1046 (1987), *Thomas v. Review Board*, 450 U.S. 707 (1981), and *Sherbert v. Verner*, 374 U.S. 398 (1963), the IRS here has burdened these believers by denying them a government benefit that is otherwise generally available. As this Court stated in *Sherbert*, "[i]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." 374 U.S. at 404. *See also Bob Jones Univ.*, 461 U.S. at 603-04 (disallowance of deductions for charitable contributions imposes burden on taxpayers' religious practices). This case is therefore distinguishable from *Lyng v. Northwest Indian Cemetary Protection Ass'n*, 108 S.Ct. 1319 (1988), and *Bowen v. Roy*, 106 S.Ct. 2147 (1986), in which the conduct of internal government affairs was held not to burden the free exercise of Native Americans.

Finding that the law created a denominational preference by discriminating against "small, new or unpopular denominations," the Court held that the elevation of form over substance in the fifty percent rule infringed religious liberty, which requires that "'[t]he government must be neutral when it comes to competition between sects.'" *Id.* at 246 (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)). "Free exercise," the Court stressed, "can be guaranteed only when [officials are required] to accord to their own religions the very same treatment given to small, new or unpopular denominations." 456 U.S. at 245.

As in *Larson*, the rule advocated by the IRS here is not justified by a compelling interest, and further is not closely tailored to fit that interest. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (only interests "of the highest order" may justify infringing religious liberty; infringement must be narrowly tailored).

According to the IRS, taxation of fixed donations is required to protect against the deduction of payments that yield personal religious benefits to the donors. Yet fixed payments that yield such benefits to adherents of other faiths traditionally have been deductible and have not undermined the integrity of the tax code. Further, promises of personal benefits in return for commitments to the religion, including financial support, are common to virtually every religious denomination. The IRS here attempts to discriminate among religions without compelling justification.[62]

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[62] The petitioners do not question the government's interest in a sound tax system. *United States v. Lee*, 455 U.S. 252 (1982). But the government's action here achieves exactly the opposite: by denying these deductions, the IRS creates unsound, discretionary, and unequal tax administration. Acceptance by the courts below of the IRS's contention that its compelling interest in the need to maintain a sound and uniform tax system justifies both any free exercise burden and violations of the establishment prohibition turns a substantial constitutional requirement into a mere formality. *Hernandez*, 819 F.2d at 1225; *Graham*, 822 F.2d at 850-53. *See also Graham*, 83 T.C. at 583.

The long American tradition of religious vitality and pluralism rests on constitutional protection of new and innovative religious beliefs and methods of worship. As Judge Noonan commented:

> Amish, Baptists, Black Muslims, Catholics, Christian Scientists, Episcopalians, Evangelicals, Hopi, Jehovah's Witnesses, Jews, Lutherans, Mennonites, Methodists, Mormons, Native Americans, Navahos, Presbyterians, Rumanian Orthodox, Russian Orthodox, Scientologists, Serbian Orthodox, Unification Church members—to list only the principal religious litigants —have found in the framework afforded by the Constitution a way of living with governmental power . . . accommodating enough not to destroy them or even to choke their development.

J. Noonan, *The Believer and the Powers That Are* 477 (1987). Whether the doctrine of a particular faith dictates that it worship congregationally or individually or that it impose tithes on its members, collect dues, pass the collection plate, or charge a set fee for its worship services, is for the religious group itself to decide.

The long-standing distinction between secular and religious services is grounded in the language and historical policies of the tax code, has never been questioned by Congress, and has permissibly accommodated religious interests for nearly seven decades. *See Amos*, 107 S.Ct. 2862. By contrast, the denial of deductions would permit the IRS to tax as it wishes religious benefits, thereby secularizing the religious enterprise. The religion clauses prohibit such infringement of religious liberty.

Respectfully submitted,

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July, 1988

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

Internal Revenue Code of 1954 (26 U.S.C.) § 170—Charitable, etc., Contributions and Gifts *

(a) Allowance of deduction.

(1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. * * *

(b) Percentage limitations.

(1) Individuals.—In the case of an individual, the deduction in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule. Any charitable contribution to—

(i) a church or a convention or association of churches.

* * * *

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* Only those portions of 26 U.S.C. § 170 and 26 U.S.C. § 501 relevant to the discussion in this brief are set forth here. References to Title 26 United States Code are to the Internal Revenue Code of 1954, which was in effect when the tax returns at issue here were filed and when the Commissioner's notices of deficiency were issued. As part of the Tax Reform Act of 1986, the 1954 Code was redesignated the Internal Revenue Code of 1986. Pub. L. 99-514 § 2(a), 100 Stat. 2085, 2095. The portions of sections 170 and 501 of the 1954 Code pertinent to this case were not changed by the Tax Reform Act of 1986 and remain in force in identical form.

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(c) Charitable contribution defined. For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of:

* * * *

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

* * * *

FILED
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Nos. 87-963, 87-1616

IN THE

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OCTOBER TERM, 1988

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Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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On Writ of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

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SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

STATEMENT

On July 7, 1988, petitioners filed their brief on the merits in the above-entitled cases. On July 19, 1988, the Sixth Circuit Court of Appeals decided *Neher v.*

Commissioner, No. 86-1275, a related appeal from a Tax Court judgment based on its decision in the designated "test" case, *Graham v. Commissioner*, 83 T.C. 575 (1984).[1] In the unanimous and well-reasoned *Neher* decision, the Sixth Circuit joined with the Eighth and Second Circuits in reversing the Tax Court's denial of the charitable deductions at issue here.[2] This supplemental brief is filed pursuant to Rule 35.5 of this Court to address this decision, which was issued subsequent to the filing of petitioners' main brief.

NEHER CORRECTLY HOLDS THAT FIXED DONATIONS TO TAX-EXEMPT RELIGIOUS ORGANIZATIONS FOR PARTICIPATION IN RELIGIOUS SERVICES ARE DEDUCTIBLE UNDER § 170.

1. Since the record in each of these related cases is based upon the stipulations and the uncontradicted testimony on behalf of the taxpayers in the Tax Court in *Graham*, there are no significant factual variations. The Sixth Circuit agreed that the payments at issue here were made for participation in Scientology's "two central religious practices": "auditing" and "training." *Neher*, Slip Op. at 3-4, 4a.[3] The court noted that although the religious practice of auditing is "done in one-on-one situations, such sessions are ritualized, not individualized," and that "auditing sessions are strictly conducted pursuant to direction found in Scientology scriptures." *Id.* at 4, 4a.

[1] *Neher* is the seventh appellate court decision in cases based on the record of the Tax Court in *Graham*.

[2] The decision by the Sixth Circuit in *Neher* is expected to be the last decision issued by a Court of Appeals in this litigation. Similar appeals are pending in the Third, Fifth, Seventh, and Eleventh Circuits. Three of these courts have announced that they will hold their cases pending a decision on the merits by this Court. The Third Circuit has not yet scheduled briefing of its case.

[3] References in this brief are indicated as follows:

To the appendix to this brief which sets forth the opinion of the Sixth Circuit in *Neher v. Commissioner* (——a); to the petitioners' main brief in the instant cases (Pet. Br. ——).

The Sixth Circuit in *Neher* emphasized that the government in these cases "has *conceded* that the Church of Scientology is a 'religion' and a 'church' within the meaning of Section 170 of the Internal Revenue Code . . . and a qualified corporation under Section 170(c)(2), thus entitled to receive deductible charitable contributions." *Id.* at 5-6, 6a (emphasis in original). The court noted that, based on the parties' stipulations and the Tax Court's findings, it must "as a matter of course" accept that "the Church of Scientology is indeed a 'church' and that auditing and training are indeed 'religious practices,' thereby ignoring any findings or statements to the contrary." *Id.* at 6, 6a. As a result, the Sixth Circuit properly concluded that the factual determination of the Tax Court that the Church "operates in a commercial manner in providing these religious services" is "irrelevant and not controlling." *Id.* at 5, 5a-6a; *see also* Pet. Br. at 26, n.37.

The Sixth Circuit observed further that the fixed donations at issue here are the application of a fundamental tenet of Scientology, "the doctrine of exchange," and that "fixed donation payments clearly constitute the majority of the Church's funds and are used to pay the costs of Church operations and activities." *Neher*, Slip Op. at 4, 4a-5a.

2. The *Neher* court held that the payments by the taxpayer to the Scientology Church are indistinguishable from "*fixed* donations of money to other churches and religions by persons seeking a spiritual gain [that] have consistently been held to be within the meaning of the statutory definition of 'charitable contribution.'" *Neher*, Slip Op. 13-20, 14a-21a (emphasis in original). The court, after reviewing prior administrative rulings and case law, rejected the attempt to distinguish this tax-

payer's situation on the ground that the religious services here were provided "one-on-one," concluding that no "meaningful distinction can be drawn between this contribution and the others previously held to be deductible." *Neher*, Slip Op. at 20, 20a. The Sixth Circuit stated:

> Finally, we take into account Neher's argument as to the deductibility of fixed donations made to other religions and churches. Particularly notable are the Mormon tithing requirements and the admission fee to Jewish High Holy Day Services. Both of these requirements center around the admission to the temple, a place of great importance to the members of these two religions. These fixed requirements, as well as other fixed contributions made in the form of collection plate offerings, bequests for masses, pew rents and mandatory church dues, have long been held to be deductible as charitable contributions. . . . Even the other circuit courts that have upheld the Tax Court's *Graham* decision admit that there may be some inconsistency between these rulings and their decisions. . . .
>
> Donations to churches related to participation in religious worship have long been held *not* to yield specific private benefits to the donor, who is considered only an incidental beneficiary, but to render primary benefit to the members of the religion and the public at large. . . . Such a holding is applicable here as the appellant made his contributions with full awareness that his payments for participation in auditing and training comprised a portion of the *principal support* of the Church. As such, the primary purpose of the payments was to benefit and further the religious objectives of the Church, thereby rendering the primary benefit to the Church's members and the public at large. . . .
>
> [W]e respectfully disagree with the Tax Court and . . . four circuit courts that a meaningful distinction can be drawn between this contribution and the others previously held to be deductible. Therefore, we find that Neher's payments to the Church to participate in religious services were charitable contributions and thus, Neher was entitled to a federal income tax deduction for those payments.

Neher, Slip Op. at 18-20, 19a-20a (emphasis in original) (citations omitted).

3. In reaching its conclusion that the fixed donations at issue are deductible, the Sixth Circuit applied an "objective standard"—looking to the nature and value of any "commensurate benefits" received by the taxpayer in return for his donation—rather than the "subjective standard" of "detached and disinterested generosity" relied upon by the Ninth and Tenth Circuits in related appeals. *Neher*, Slip Op. at 8-9, 8a-10a; *see also* Pet. Br. at 38-39 n.53 (urging rejection of the subjective standard). *Compare Graham v. Commissioner*, 822 F.2d 844, 848 (9th Cir. 1987); *Christiansen v. Commissioner*, 843 F.2d 418, 420 (10th Cir. 1988). After examining the "congressional concerns and intent behind Section 170," the court concluded that the long-standing administrative practice, which allows deductions under § 170 when participation in religious services is received by the donor in return, "adheres to and strengthens" § 170 and its policies. *Neher*, Slip Op. at 7-12, 7a-13a. The court distinguished *United States v. American Bar Endowment*, 477 U.S. 105 (1986), on the ground that "that case itself involved a return on which a material or financial value could be placed, *i.e.*, an insurance policy." *Neher*, Slip Op. at 15, 14a-15a; *see also id.* at 10, 17, 10a, 17a; Pet. Br. at 29-32. The court concluded: "[W]e find . . . that a strictly spiritual or religious return is simply not enough to make a 'contribution' a 'non-contribution' or a 'gift' a 'non-gift'." *Neher*, Slip Op. at 15, 15a.

4. The *Neher* court analyzed in detail the suggestions of the First Circuit in *Hernandez* for assigning value to the kind of religious benefits at issue here. *Neher*, Slip Op. at 15-18, 15a-19a; *see also* Pet. Br. at 37-41. The Sixth Circuit rejected all three *Hernandez* suggestions for valu-

ing religious benefits. First, it agreed with the Eighth Circuit in *Staples v. Commissioner*, 821 F.2d 1324, 1327-28 (8th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3592 (U.S. Mar. 1, 1988) (No. 87-138) that "the stipulations and concessions by the parties foreclose any reliance on the appellant's donations as to the value of the offered services." *Neher*, Slip Op. at 16, 16a-17a; *see also* Pet. Br. at 39-40. Second, the court decided that "there are no other providers of similar services to whom the court might look to place a value on the offered services" and that, in any event, "any such approach might well create problems of constitutional magnitude." *Neher*, Slip Op. at 16, 17a; *see also* Pet. Br. at 40 n.55. Third, the Sixth Circuit concluded that determining value based on the cost to the Church of providing the religious services would impermissibly entangle the court in the Church's finances and bookkeeping operations. *Neher*, Slip Op. at 15-17, 17a-18a; *see also* Pet. Br. at 40 n.55 & 44-45.

The *Neher* court noted that "participation in religious worship, *i.e.*, auditing and training, is very different than a ticket to the museum or the symphony. . . . items which have marketable commercial values and prices which have been set for the public at large." Slip Op. at 17, 18a. The court regarded the benefit one receives from participating in religious worship as "a uniquely *personal* benefit," *id.*, and concluded that the problems "a court would encounter in attempting to value a truly intangible return such as the one at issue are insurmountable." *Id.* at 15, 15a-16a.

5. The Sixth Circuit's decision that "Neher's payments to the Church for auditing and training . . . were 'charitable contributions' within the meaning of section 170" eliminated any need for the court to reach the constitutional claims raised by Neher. *Neher*, Slip Op. at 20, 21a. The *Neher* court did, however, suggest that the valuations of religious benefits required under the Tax Court opinion in *Graham* raise problems of "constitutional magnitude" and would cause governmental entanglement in church finances that "is simply not permissible." *Id.* at 16-17, 17a. Indeed, the court stressed that "any other conclusion has ominous implications for all religious institutions." *Id.* at 20, 20a-21a (quoting *Christiansen v. Commissioner*, 843 F.2d 418, 421 (10th Cir. 1988) (Seymour, J., dissenting)).

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 86-1275

JEFFREY HAROLD NEHER,
Petitioner-Appellant,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

On Appeal from the United States Tax Court

Decided and Filed July 19, 1988

Before: JONES, WELLFORD and BOGGS, Circuit Judges.

JONES, Circuit Judge, delivered the opinion of the court, in which BOGGS, Circuit Judge, joined. WELLFORD, Circuit Judge, (p. 21) delivered a separate concurring opinion.

JONES, Circuit Judge. Jeffrey Harold Neher, the appellant, appeals the denial of a federal tax deduction sought for payments made to the Church of Scientology ("the Church"). Neher, in 1978 and 1979 respectively, made payments of $3,084 and $6,019 to the Church and deducted those amounts as "charitable contributions" on

his income tax returns for those years. The Commissioner disallowed the deductions and asserted tax deficiencies of $450 for 1978 and $1,029 for 1979. Neher challenged the Commissioner's ruling in Tax Court. On March 6, 1986, the court entered its decision upholding the Commissioner's ruling. On March 17, 1986, Neher timely filed this appeal. For the following reasons, we find the Tax Court's decision to be erroneous. Accordingly, we reverse.

I.

A. Procedural History

The proceedings from which this appeal arises are not the type found in a typical case. Rather, this appellant was one of over 1000 similarly situated Tax Court petitioners who "contributed" money to the Church of Scientology. These taxpayers and the Commissioner agreed to be bound, subject to their right of appeal, by the Tax Court's decision in a "test" case involving only three petitioners from the Ninth Circuit. This binding decision was rendered by the Tax Court in *Graham v. Commissioner*, 83 T.C. 575 (1984). The relevant parties also agreed that the record in *Graham* would be treated as part of the record in every petitioner's case for the purposes of appeal.

After the Tax Court decided *Graham* in favor of the Commissioner, it entered judgments against the remaining petitioners. This appeal ensued as did others in every circuit court except the Federal Circuit. Indeed, as of this writing, six circuit courts have issued decisions in cases arising from these appeals. Those decisions are as follows: *Foley v. Commissioner*, 844 F.2d 94 (2d Cir. 1988) (reversing the Tax Court's denial of the deductions); *Christiansen v. Commissioner*, 843 F.2d 418 (10th Cir. 1988) (affirming the Tax Court's denial of the deductions); *Miller v. Commissioner*, 829 F.2d 500 (4th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3627

(U.S. Mar. 15, 1988) (No. 87-1449) (affirming the Tax Court's denial of the deductions); *Graham v. Commissioner*, 822 F.2d 844 (9th Cir. 1987), *cert. granted*, 56 U.S.L.W. 3805 (U.S. May 24, 1988) (No. 87-1616) (consolidated with *Hernandez v. Commissioner*, No. 87-963) (affirming the Tax Court's denial of the deductions); *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3592 (U.S. Mar. 1, 1988) (No. 87-1382) (reversing the Tax Court's denial of the deductions); *Hernandez v. Commissioner*, 819 F.2d 1212 (1st Cir. 1987), *cert. granted*, 108 S. Ct. 1467 (1988) (affirming the Tax Court's denial of the deductions).

Today we join the Eighth and Second Circuit Courts of Appeals in holding that, under the circumstances of this case and by reason of the government's concession hereinafter discussed, the appellant's payments to the Church were "contributions" under the Internal Revenue Code ("IRS" or "the Code"), 26 U.S.C. § 170(c)(2)(B) (1982), and therefore, his deductions were wrongfully denied.

B. The Practice of Scientology

The appellant, Jeffrey Neher, is a Scientologist and was so during the tax years in question. The Tax Court made several factual findings as to the religious practices of Scientology. Those findings, which we adopt, can be found in the Tax Court's decision in *Graham*, *see* 83 T.C. at 577-79, and in the subsequent opinion of the Ninth Circuit Court of Appeals affirming the Tax Court's decision. *See Graham*, 822 F.2d at 846-47. The relevant findings are as follows.

Scientology teaches that the individual is a spiritual being having a mind and a body. Part of the mind, called the reactive mind, is unconscious. It is filled with mental images that are frequently the source of irrational behavior. Through the administration of a process known

as *auditing*, one of Scientology's two central religious practices, an individual, called a *preclear*, is helped to erase his reactive mind and gain spiritual competence. Auditing is also known as processing, counseling, and pastoral counseling. *Training*, Scientologists' second central religious practice, is a discipline distinct from auditing. It involves courses of instruction in the tenets of Scientology.

Scientologists believe that they can attain benefits from both auditing and training, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT sections." The various steps or degrees of accomplishment are set forth in a chart entitled "Classification Gradation and Awareness Chart of Levels and Certificates."

A trained Scientologist, known as an auditor, administers the auditing. He is aided by an "E-meter." This device helps the auditor identify the preclear's areas of spiritual difficulty by measuring skin responses during a question and answer session. These auditing sessions are offered in fixed blocks of time called "intensives." Although auditing sessions are done in one-on-one situations, such sessions are ritualized, not individualized. That is, auditing sessions are strictly conducted pursuant to direction found in the Scientology scriptures.

Training is also delivered by a trained Scientologist. Course offerings range from basic courses which introduce the doctrines and texts of Scientology through advanced courses which train and qualify auditors to deliver auditing at the highest level.

One of the tenets of Scientology is that any time a person receives something, he must pay something back. This is called the *doctrine of exchange*. The Church of Scientology applies this doctrine by charging a fixed donation for training and auditing. With few exceptions, these services are *never* given for free. *Thus, fixed donations are generally a prerequisite to a person receiving auditing and training.* These fixed donation payments clearly constitute the majority of the Church's funds and are used to pay the costs of Church operations and activities.

Over the period at issue, the general rates for the fixed donations for auditing varied with the amount of auditing time involved. The Church's "price lists" disclose that fees for auditing services ranged from $625 for a 12½ hour "intensive," or session, to $4,250 for a 100 hour intensive. Additional fees were required for specialized types of auditing.

Members of the Church are encouraged to make advance payments for Scientology courses. If the payment is made well in advance of the services, a discount of five percent can be obtained. When a Scientologist makes an advance payment, the Church credits his account. Once the member begins receiving a service, his account is debited. It is also the Church's policy to refund advance payments upon request at any time before services are received.

The Church promotes its services through free lectures, congresses, free personality tests and handouts. Advertisements are placed in newspapers, magazines and on the radio. These promotional activities are geared to be responsive to community concerns, which are determined from surveys.

The Tax Court in *Graham* specifically found that the Church operates in a commercial manner in providing these religious services. *See* 83 T.C. at 578. The court found that by internal policy memoranda, the Church sets its goal as the making of money and that that goal permeates virtually all of the Church's activities, services, pricing policies, dissemination practices and management decisions.

We find that factual determination to be irrelevant and not controlling in this circumstance.

Rather, the government, for the purposes of the eleven appeals arising from the Tax Court's *Graham* litigation, has *conceded* that the Church of Scientology *is* a "relilion" and a "church" within the meaning of section 170 of the Internal Revenue Code of 1954 ("Code"),[1] 26 U.S.C. § 170(b)(1)(A)(i) (1982), and a qualified corporation under section 170(c)(2), thus entitled to receive deductible charitable contributions. *See Graham*, 83 T.C. at 576.

The Commissioner made these concessions even though the record indicates that his original reason for disallowing the deductions was because the organization itself, *i.e.*, the Church of Scientology, was not a qualified entity. This reasoning was based upon the Commissioner's revocation of the Church's tax-exempt status. This revocation was upheld by the Tax Court in *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1752 (1988). The Ninth Circuit Court of Appeals, however, affirmed that decision only recently, July 28, 1987, and the government apparently decided to expedite the proceedings at issue and thus chose not to wait for the above case's final outcome. However, in deciding this case, we, as a matter of course, must accept the stipulations from the respective parties and the Tax Court's findings that the Church of Scientology is indeed a "church" and that auditing and training are indeed "religious practices" thereby ignoring any findings or statements to the contrary.[2]

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[1] All references to the Code are to the Internal Revenue Code of 1954 as amended and in effect during the tax years in question.

[2] Both parties to this appeal made numerous other stipulations which are not set out within this opinion.

Because of these concessions, our function in this case is limited. That is, we need determine only whether the payments made by the appellant to the Church were "gifts" or "contributions" within the meaning of the relevant statute and thus deserving of a federal income tax deduction.

In making this decision, we look to Internal Revenue Code section 7482(a) for guidance. This section not only provides our jurisdiction to hear this case, but also sets forth our appropriate standard of review. Indeed, section 7482(a) provides, in pertinent part, that:

> [t]he United States Court of Appeals . . . shall have exclusive jurisdiction to review the decisions of the Tax Court . . . in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury. . . .

26 U.S.C. § 7482(a)(1982). Therefore, in this circuit, findings of fact by the Tax Court are subject to the "clearly erroneous" standard of review, while questions of law are reviewed *de novo*. *Metallics Recycling Co. v. Commissioner*, 732 F.2d 523, 526 (6th Cir. 1984). And, the clearly erroneous standard is met when " 'although there is evidence to support [the findings],' this Court 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' " *Adler v. Commissioner*, 422 F.2d 63, 64 (6th Cir. 1970)(quoting *Commissioner v. Duberstein*, 363 U.S. 278, 291 (1960)). This standard is also applicable to any factual inferences drawn by the Tax Court from undisputed basic facts. *Ohio Teamsters Educ. & Safety Training Trust Fund v. Commissioner*, 692 F.2d 432, 435 (6th Cir. 1982). *See also Commissioner v. Duberstein*, 363 U.S. 278, 291 (1960).

II.

A taxpayer may take a deduction under section 170 of the Code, 26 U.S.C. § 170 (1982), for a gift or con-

tribution made to a qualified religious organization. *See* 26 U.S.C. § 170(c)(2)(B) (A "charitable contribution" is "a contribution or gift to or for the use of" a domestic entity "organized and operated exclusively" for religious or charitable purposes.). This does not means, however, that *any* payment to such an organization is deductible; rather, the burden is on the taxpayer to prove that such a payment was a "gift" or "contribution" within the meaning of the statute. *See Staples v. Commissioner*, 821 F.2d 1324, 1326 (8th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3592 (U.S. Mar. 1, 1988) (No. 87-1382) (citing *Estate of Wood v. Commissioner*, 39 T.C. 1, 6 (1962)). *See also New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934) ("[A] taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.").

In determining whether a payment to a qualified organization is a charitable contribution or gift, a number of courts now look to see whether the payment was a voluntary transfer made without consideration, or a payment made with the expectation of receiving a commensurate benefit in return. *See, e.g., Oppewal v. Commissioner*, 468 F.2d 1000, 1002 (1st Cir. 1972). This standard, an objective one, focuses on the return received or expected by the taxpayer as opposed to the subjective "detached and disinterested generosity" test set forth by the Court in *Commissioner v. Duberstein*, 363 U.S. 278 (1960), which focuses on the intent or motive of the payor. (*Duberstein* was not a section 170 case, but rather involved section 102(a) and the determination of whether a transfer was a payment or a gift for the purposes of including it as income to the transferee.) While the Ninth and Tenth Circuits, *see, e.g., Christiansen v. Commissioner*, 843 F.2d 418 (10th Cir. 1988) and *Graham v. Commissioner*, 822 F.2d 844, 848 (9th Cir. 1987), *cert. granted*, 56 U.S.L.W. 3805 (U.S. May 24, 1988) (No. 87-1616) (consolidated with *Hernandez v. Commissioner*,

No. 87-963), still use the *Duberstein* subjective analysis, a number of circuits have apparently switched to an objective analysis, although this court has not expressly adopted such a standard. A district court within this circuit, however, has clearly and succinctly spelled out the differences in the two standards, analyzed the appropriate legislative history, and expressly adopted the objective standard. *See Haak v. United States*, 451 F. Supp. 1087 (W.D. Mich. 1978). In so doing, the *Haak* court stated:

> Courts have split on the appropriate test to be used in determining whether a particular transaction was a "contribution or gift." Initially, courts applied the definition of "gift" propounded by the Supreme Court in *Commissioner v. Duberstein*. . . .
>
> More recently, however, courts have tended to reject the "pure" *Duberstein* test focusing on motive alone in favor of a "fundamental objective" or "quid pro quo" test. Under this test the issue is whether the transfer was "to any substantial extent, offset by the cost of services rendered to [the] taxpayers."
>
> [This] Court concludes that [the] latter test is more appropriately applied in section 170 cases. [Indeed,] [t]he legislative history of the Internal Revenue Code of 1954 indicates that a primary factor to be considered in determining whether [a] transaction is a charitable contribution is whether the "contribution . . . [is] made with no expectation of a financial return commensurate with the amount of the gift."

Haak, 451 F. Supp. at 1089-90 (citations omitted).

We adopt the reasoning of the *Haak* court and thereby employ the objective standard to determine the merits of this case. In so doing, we note that the Tax Court cited *Haak* in its *Graham* decision. Indeed, in holding that

Neher's payments were not deductible contributions, the Tax Court stated:

> The record demonstrates clearly that these payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return. In addition, where contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo.

Graham, 83 T.C. at 581 (citing *Haak*, 451 F. Supp. at 1090-91).

Furthermore, we point out that our adoption of an objective standard is consistent with a recent Supreme Court decision in this area. *See United States v. American Bar Endowment*, 477 U.S. 105 (1986). *American Bar* sets forth a standard which has been relied upon by the four circuit courts which have decided this issue in favor of the Commissioner. That standard provides as follows:

> A payment of money generally cannot constitute a charitable contribution if the contributor expects a substantial benefit in return.
>
> The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of any benefit he received in return.

American Bar, 477 U.S. at 116-18.

When this objective standard is applied to the facts at hand, we find that the Tax Court erred in its decision denying the appellant a "charitable contribution" deduction for his payments to the Church. In reaching our decision, we take notice of the congressional intent behind section 170. In structuring the charitable con-

tribution deduction, Congress was attempting to facilitate the performance of the enumerated charitable purposes and objectives. Therefore, courts must distinguish

> those transactions which are in reality an exchange of cash for specific services from those transactions which are transfers for facilitation of the general charitable purpose of the organization. Thus where a transfer is made to a charitable organization with the expectation of receiving a specific tangible benefit in return, there should be no deduction under section 170.

Haak, 451 F. Supp. at 1091.

Each citation above pairs the "benefit" or "consideration" whose return will result in disallowance of the contribution by a qualifying adjective: "commensurate," "adequate," or "tangible." This simply recognizes the obvious fact that, in some sense, no one acts unless action is preferable to inaction, in some dimension. The whole concept "psychic income" has been developed to account for people doing things which appear irrational in strictly monetary terms. Thus, every gift presumably provides the giver with some return, whether in the form of public acclaim, reputation for uprightness, or simply internal satisfaction. We must look elsewhere for the distinction of those types of returns that would prevent the deduction for charitable contributions.

In so doing, however, courts must heed a second congressional concern underlying section 170. That is, Congress feared that the tax advantages which accrued to charitable organizations would give them an unfair advantage over non-charitable entities. Thus,

> [a] primary motivation of the Revenue Act of 1950 was to eliminate the dangers of this unfair competition by treating those charitable organizations engaging in business activities unrelated to their charitable purpose the same as their non-charitable competitors. Reading the Revenue Act of 1950

in conjunction with section 170, *when a charitable organization is engaged in one of the charitable activities enumerated by Congress, contributions in furtherance of those activities are be encouraged, and are therefore properly exempt from taxation. Where contributions are merely payments for services rendered, however, they are only a quid pro quo and cannot therefore further the charitable purposes of the organization to the same extent an outright gift would. In addition, such contributions raise the danger of competition with private business providing similar services, and to render such payments tax exempt would provide that unfair advantage feared by Congress.*

Haak, 451 F. Supp. at 1090-91 (emphasis added).

Our decision granting the appellant a deduction for his payments to the Church is true to the above congressional concerns. In fact, our decision is the only conclusion we could reach and remain consistent with such concerns. This is because the Church of Scientology, pursuant to the stipulations and concessions in this case, is a charitable organization engaged in one of the charitable activities enumerated by Congress in section 170 when it provides auditing and training to its members. Furthermore, the payments made by the appellant to the Church furthered the charitable purposes of the Church since payments for auditing and training are the Church's predominant means of raising money to support its activities. Thus, this type of payment, in keeping with the Scientologist practice of the doctrine of exchange, is as much a furtherance of the Church's charitable purposes as an outright gift. Finally, because similar services are not provided by a private business entity, the fairness and equality concerns expressed above are not applicable.

Although some might observe that the Scientologist practices here, (just as those of more conventional religions), could provide some psychological benefit akin

to that of commercial psychiatric therapy, there is no contention that there is any general commercial market for these services, or that Scientology provides unfair competition for psychiatrists.

Thus, our conclusion in no way violates the applicable congressional concerns and intent behind section 170, but instead adheres to and strengthens them.

III.

In holding that the appellant was not entitled to a deduction for his payments to the Church, the Tax Court found that Neher had received a return, equivalent to his payment, in the form of a religious or spiritual benefit.

An appropriate test of marketable financial value might be what would be paid for such services by persons not of the relevant faith. Thus, while it might be possible that a music-lover would pay concert prices to attend a High Holy Days service where a famous singer was serving as Cantor, in the vast majority of cases there is no market for religious services outside the relevant religious community. There is certainly no evidence that there is any general market for Scientologist religious services.

The Tax Court, and the subsequent circuit courts who have rendered decisions upholding the Tax Court, relied upon the language from *United States v. American Bar Endowment*, 477 U.S. 105 (1986), quoted in Part II of this opinion, to hold that the benefit one receives in return for a contribution or payment of money need *not* be financial or economic, but can be of a spiritual or religious nature. The appellant, however, cites to several cases, including a district court decision from this circuit, *i.e.*, *Haak v. United States*, 451 F. Supp. 1087 (W.D. Mich. 1978), which suggest a requirement to the contrary. He also argues that because he only profited

religiously or spiritually, no economic or monetary value can be placed upon his return. Indeed, Neher claims that *any* payment made for a religious or spiritual return or benefit should, as a matter of law, be considered a charitable contribution.

Furthermore, Neher points out that *fixed* donations of money to other churches and religions by persons seeking a spiritual gain have consistently been held to be within the meaning of the statutory definition of "charitable contribution." Neher points to payments for pew rents, periodic church dues, building fund assessments and basket collections. *See* Rev. Rul. 70-47, 1970-1 C.B. 49. The circuit courts upholding the decision of the Tax Court, however, have addressed this question and distinguished those donations from the present situation. Those courts have concluded that those situations involve only incidental or nominal benefits to the donor as opposed to the direct one-on-one counseling sessions involved here. Neher argues, however, that such a distinction is hard to accept. We now address each of these contentions.

There is quite an amount of case law which appears to support Neher's argument that the return benefit must be financial or economic in nature for the taxpayer's deduction to be denied. The cases, as well as the legislative history of section 170, identify nondeductible payments as those in which the payor received a return which was material, tangible, financial or economic. *See, e.g., Winters v. Commissioner*, 468 F.2d 778, 780 (2d Cir. 1972); *DeJong v. Commissioner*, 309 F.2d 373, 379 (9th Cir. 1962); *Haak*, 451 F. Supp. at 1091; *Murphy v. Commissioner*, 54 T.C. 249, 253 (1970). *See also* S. Rep. No. 1622, 83d Cong., 2d Sess., *reprinted in* 1954 U.S. Code Cong. & Admin. News 4621, 4830-31; H.R. Rep. No. 1337, 83d Cong., 2d Sess., *reprinted in* 1954 U.S. Code Cong. & Admin. News 4017, 4180. While it is true that *American Bar* seemingly does not use such

language, that case is not exactly on all fours with this appeal. In that case, it was *assumed* that the basic payments were made in exchange for the receipt of an economic benefit—*i.e.*, the payments were made in order to receive insurance policies. Indeed, in *American Bar* the "dual character" analysis was employed. That is, the taxpayers there received a deduction only for the difference between the payment made and the fair market value of the benefit—the policy—received. Thus, the *American Bar* taxpayers received an indisputable *tangible* benefit with a measurable market value for their payments to a qualified charitable organization. Accordingly, the dual character analysis was appropriately employed by the Court.

Here, in contrast, no tangible or recognizable benefit—financial or nonfinancial—was received. Instead, Neher received the right to participate in religious worship; an item without a marketable financial value which could be used to offset the amount of his contributions.

According to the language found in the majority of the cases, it would appear that a financial or economic return or benefit is required to make a contribution nondeductible; of course such language may simply reflect the courts' thoughts as to the difficulty of valuing any other type of return. However, *American Bar*, the latest decision from the Supreme Court, does not indicate that such a return need be economic, but, that case itself involved a return on which a material or financial value could be placed, *i.e.*, an insurance policy.

Without committing ourselves to the proposition that a payor must receive an "economic" benefit in order for his payment to be declared nondeductible, we find, on other grounds, that a strictly spiritual or religious return is simply not enough to make a contribution a "non contribution" or a gift a "non-gift".

Instead, we believe that the problems a court would encounter in attempting to value a truly intangible re-

turn such as the one at issue are insurmountable. Although the government argues that this court need not value the services received by the appellant since the Church has already done so, such an argument is deceiving. In what other fashion can a court determine whether such a return was commensurate with the contribution? The First Circuit Court of Appeals, however, in affirming the Tax Court's decision, points out that there are ways in which courts can assign value to such an intangible benefit and, in fact, have already made such determinations in the past. *See Hernandez v. Commissioner*, 819 F.2d 1212, 1217 (1st Cir. 1987), *cert. granted*, 108 S. Ct. 1467 (1988). The *Hernandez* court stated:

> [The appellant] claims that while the government may assign economic value to secular benefits, it is impossible for the government to determine the economic value of religious benefits. As a practical matter, we note that the government has recognized the economic value assigned to secular services such as adoption services, symphony performances, and museum admissions even though the benefits flowing from those services are, in theory, as difficult to monetarize as religious ones. In such cases the courts and the IRS look not to the intrinsic value of the benefits, but instead either to *(1) the price set by the service providers, (2) the prices set by providers of similar services, or (3) the costs of providing the service.*

Hernandez, 819 F.2d at 1217 (citations omitted and emphasis added). We find, however, that all three of the *Hernandez* court's suggestions are unworkable in the religious context.

First, as pointed out by the Eighth Circuit Court of Appeals in *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3592 (U.S. Mar. 1, 1988) (No. 87-1382), the stipulations and concessions by the parties foreclose any reliance on the

appellant's donations as to the value of the offered services. *Staples*, 821 F.2d at 1327-28 ("Under the stipulations the fixed donations are not market prices set to reap the profits of a commercial moneymaking venture; rather the [Church] is a bona fide church which selected fixed donations as its mechanism for raising funds from its members."). Thus, the first suggestion by the *Hernandez* court is not useful.

Second, there are no other providers of similar services to whom the court may look so as to place a value on the offered services. Furthermore, any such approach might well create problems of constitutional magnitude.

Third, to make a determination on the basis of the cost to the Church for providing auditing and training would cause the court to become entangled in the Church's finances and bookkeeping operations. Such action is simply not permissible and is precisely what the members of this panel fear may happen. That is, a decision to the contrary today may well lead to the monitoring and auditing of church records by the government. Even the *Hernandez* court admits that this problem may arise with the approach it has taken to this most difficult question:

> We can hypothesize cases in which a literal application of the *American Bar Endowment* test could create both practical and constitutional difficulties. Imagine, for example, a case in which the government monitored church records in an attempt to place a monetary value on the benefit of all church services, group programs, and pastoral counselling [sic] generally available to contributing members. Such a case would present not only the problem of determining value but also the problem of excessive entanglement in the affairs [of] a religious institution. The present case, however, raises neither of these problems. . . .

Hernandez, 819 F.2d at 1218.

Because we believe that the case at hand presents the very problems that the *Hernandez* court envisions occurring in the future, we depart from that court's reasoning that a value can be assigned to a return like that received by the appellant in this case. Instead, we believe that participation in religious worship, *i.e.*, auditing and training, is very different than a ticket to the museum or the symphony. Indeed, those events are items which have marketable commercial values and prices which have been set for the public at large. A valuation of a return in that instance is certainly not impossible. In contrast, the benefit one receives from participating in religious worship, a uniquely *personal* benefit, is hard to quantify and heretofore has not been quantified. Thus, we refuse to place ourselves in the unenviable position of having to determine the benefit to a given individual when no other individual shares the same circumstances.

Further, by this standard, the "return" from a priest who hears more confessions would be less than that of a similarly remunerated priest who hears fewer confessions. The "return" in wisdom gained from hearing the preacher of a small congregation might be held to be much greater than that from one who has attracted enough parishioners who spread the similar cost more widely. This is an obviously unworkable standard.

Neher's request that we draw a distinction between religious benefits and all other benefits received for monetary contributions to qualified entities might be interpreted as a request to draw bright lines where they simply do not exist, *i.e.*, making distinctions among the different charitable organizations (religious, educational. scientific, artistic) found in section 170. However, we believe that, in addition to the reasoning set forth above, such an argument is more than addressed by the Eighth Circuit's decision in *Staples*. *See* 821 F.2d at 1326-28. That court's conclusions emphasize the necessary differences between religious benefits and all other benefits and thus lead us to concur in that court's opinion.

Finally, we take into account Neher's argument as to the deductibility of fixed donations made to other religions and churches. Particularly notable are the Mormon tithing requirements and the admission fee to Jewish High Holy Day Services. Both of these requirements center around the admission to the temple, a place of great importance to the members of these two religions. These fixed requirements, as well as other fixed contributions made in the form of collection plate offerings, bequests for masses, pew rents and mandatory church dues, have long been held to be deductible as charitable contributions. *See* Rev. Rul. 78-366, 1978-2 C.B. 241 (bequests for masses); Rev. Rul. 76-323, 1976-2 C.B. 18 (fixed payments based on church members' income from "required" outside employment); Rev. Rul. 70-47, 1970-1 C.B. 39 (pew rents, building fund assessments and mandatory church dues). Even the other circuit courts that have upheld the Tax Court's *Graham* decision admit that there may be some inconsistency between these rulings and their decisions. *See, e.g., Hernandez*, 819 F.2d at 1227 ("[W]e have some doubt as to the continuing validity of the presumption in Rev. Rul. 70-47, 170-1 [sic] C.B. 39, that pew rents and mandatory church dues are tax deductible gifts . . . ."); *Graham v. Commissioner*, 822 F.2d 844, 850 (9th Cir. 1987), *cert. granted*, 56 U.S.L.W. 3805 (U.S. May 24, 1988) (No. 87-1616) (consolidated with *Hernandez v. Commisisoner*, No. 87-963) ("The Tax Court had sufficient evidence to distinguish appellants' fixed donations from deductible payments to religious organizations in which the primary motivation is presumed to be charitable, . . . though we are not convinced that every one of those rulings would comport with the analysis of section 170 that we have set forth here.") (citations omitted).

The *Hernandez* court, however, attempted to distinguish its decision from the past rulings by pointing out

that pew rents and periodic fixed dues, or tithes, obtain for members the right to participate in collective worship services while the appellant in this case received an opportunity to participate in an individualized service. Such a distinction is without meaning. Donations to churches related to participation in religious worship have long been held *not* to yield specific private benefit to the donor, who is considered only an incidental beneficiary, but to render primary benefit to the members of the religion and the public at large. *See* Rev. Rul. 71-580, 1971-2 C.B. 235-36. *See also Foley v. Commissioner*, 844 F.2d 94, 96 (2d Cir. 1988); *Staples*, 821 F.2d at 1326 ("The public benefit from religion remains and predominates regardless of whether church doctrines provide for traditional congregational worship or individual worship as in Scientology or whether donations are voluntary or fixed.") (citations omitted). Such a holding is applicable here as the appellant made his contributions with full awareness that his payments for participation in auditing and training comprised a portion of the *principal support* of the Church. As such, the primary purpose of the payments was to benefit and further the religious objectives of the Church, thereby rendering the primary benefit to the Church's members and the public at large. *Foley*, 844 F.2d at 97.

In light of this fact, we respectfully disagree with the Tax Court and, to this date, four circuit courts that a meaningful distinction can be drawn between this contribution and the others previously held to be deductible. Therefore, we find that Nehr's payments to the Church to participate in religious services were charitable contributions and thus, Neher was entitled to a federal income tax deduction for those payments. As pointed out by the dissenting judge in *Christiansen v. Commissioner*, the Tenth Circuit's decision in this multi-circuit litigation, "any other conclusion has ominous implications for all religious institutions." *See Christiansen v. Commissioner*, 843 F.2d 418, 421 (10th Cir. 1988) (Seymour, J., dissenting).

IV.

Because we hold that Neher's payments to the Church for auditing and training, two distinct and separate Scientology religious practices, were "charitable contributions" within the meaning of section 170, we reach neither the constitutional claims raised by Neher nor his selective prosecution claim.

Therefore, for all of the foregoing reasons, the decision of the Tax Court is hereby REVERSED.

WELLFORD, Circuit Judge, concurring.

I concur in Judge Jones' well reasoned opinion, and write briefly only to emphasize two factors that seem particularly important in this decision. First, the government itself, for whatever reasons, has conceded for purposes of this case (and the others similarly situated) that the Church of Scientology is a "church," a tax exempt organization. At the same time in other proceedings noted by Judge Jones in his opinion, the government has expressly challenged the Church of Scientology's tax exempt status, and, in fact, has successfully revocated its tax exemption. (*Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984), *aff'd* 823 F.2d 1310 (9th Cir. 1987)). Our decision then applies in this limited and specific situation where the government has waived or relinquished here any challenge to the tax exempt status of the Church in question and the commercial nature of its operation. It seems to me that the proper avenue of challenge by the government is to the tax exemption claimed by this organization which seems to possess more characteristics of commercial activity than of spiritual concerns usually associated with a church or a religion. (One is struck by its emphasis, for example, on "auditing" and on the doctrine of "exchange.")

I am further persuaded by the rationale of *Staples* and those other courts and judges that have followed the reasoning of the Eighth Circuit therein, and the emphasis on no "recognizable return benefit under section 170" where the government has initially conceded that the practices and "contributions" in question are "religious practices" in a bona fide church.

I would therefore concur in the reversal of the Tax Court's decision.

(9) (8)

Nos. 87-963 and 87-1616

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1988

ROBERT L. HERNANDEZ, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

KATHERINE JEAN GRAHAM, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO
THE UNITED STATES COURTS OF APPEALS
FOR THE FIRST AND NINTH CIRCUITS

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

1. Whether a payment to the Church of Scientology for auditing or training sessions is deductible from gross income as a "contribution or gift" under Section 170 of the Internal Revenue Code.

2. Whether the First Amendment requires that such a payment be deductible from gross income.

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In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 87-963

ROBERT L. HERNANDEZ, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

No. 87-1616

KATHERINE JEAN GRAHAM, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FIRST AND NINTH CIRCUITS

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

In No. 87-963, the opinion of the court of appeals (87-963 Pet. App. 1a-28a) is reported at 819 F.2d 1212. The decision and order of the Tax Court (87-963 Pet. App. 43a) is unreported. In No. 87-1616, the opinion of the court of appeals (Pet. App. 1a-18a)[1] is reported at 822 F.2d 844. The opinion of the Tax Court (Pet. App. 36a-46a) is reported at 83 T.C. 575.

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[1] Unless otherwise indicated, "Pet. App." refers to the appendix to the petition in No. 87-1616.

JURISDICTION

In No. 87-963, the judgment of the court of appeals (87-963 Pet. App. 29a) was entered on June 1, 1987. A petition for rehearing was denied on July 15, 1987 (87-963 Pet. App. 30a). On October 6, 1987, Justice Brennan extended the time within which to file a petition for a writ of certiorari to and including December 12, 1987. The petition was filed on December 11, 1987, and was granted on April 18, 1988. In No. 87-1616, the judgment of the court of appeals (Pet. App. 19a) was entered on July 17, 1987. A petition for rehearing was denied on December 1, 1987 (Pet. App. 20a-21a). On February 19, 1988, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including March 30, 1988. The petition was filed on that date and was granted on May 23, 1988, at which time it was ordered consolidated with No. 87-963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution and Section 170 of the Internal Revenue Code (26 U.S.C.) are set forth in an appendix (App., *infra,* 1a-2a).

STATEMENT

1. The issue in this case concerns the deductibility from gross income of payments made by petitioners to the Church of Scientology. The Church is an international network of organizations that consists both of a central organization, the "mother" Church of Scientology of California, and of numerous branches and divisions that are separate entities for tax purposes. The Church is organized in a hierarchical fashion with the spiritual leadership pro-

vided by the highest division, which issues policy letters and directives to the lower-ranking divisions. Scientology teaches that an individual is a spiritual being having a mind and a body. A process called "auditing" is believed to help an individual to gain spiritual competence. Auditing is administered in a one-to-one session by a trained Scientologist who asks questions of the auditee and identifies areas of spiritual difficulty by using an electronic device to measure skin responses during the session. Scientologists believe that the highest level of spiritual ability and awareness can be attained only by progressing on a step-by-step basis through ascending levels of auditing, which is provided in short blocks of time known as "intensives." The Church also provides "training" courses, in which individuals study the doctrines and tenets of Scientology; Scientologists are taught that spiritual gains also result from participation in these courses, and training courses, like auditing, are provided in ascending levels. Pet. App. 24a-26a, 38a; *Church of Scientology* v. *Commissioner,* 83 T.C. 381, 385-388 (1984), aff'd, 823 F.2d 1310 (9th Cir. 1987), cert. denied, No. 87-1377 (May 16, 1988).

The Church charges a "fixed donation" for training courses and auditing intensives. These charges are set forth in schedules, and they vary depending upon the length and content of the programs (with the price per hour generally declining for longer programs) (see J.A. 97, 99, 115, 121-125). The charges for each particular program, however, do not vary; they are quite substantial,[2] and they are almost never waived. Indeed, an official policy letter issued by the Church states that "[p]rice cuts are forbidden under any guise" and that "PROCESSING

[2] For example, in 1972 the charge for the shortest available auditing intensive was $625 for 12½ hours. The charge for a 100-hour intensive was $4,250. See Pet. App. 39a; J.A. 97.

MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 39a n.6).[3] The Church does offer a standard 5% discount on its programs, however, if full payment is made in advance of the services to be rendered (*id.* at 40a; J.A. 121). Under certain conditions, refunds are available for "undelivered" services if an individual does not complete a particular program. The refund must be sought in writing within 90 days, and the individual must undertake to release the Church from further obligation. A 12% administrative charge is deducted from the refund, and the Church will not again audit or train an individual who obtains a refund. J.A. 104-105. Applicants for auditing and training are expected to sign enrollment forms accepting the conditions under which these services are rendered (see J.A. 131-133). This system of mandatory, fixed charges for its programs is an application of a tenet of the Church, the "doctrine of exchange," which provides that "anytime a person receives something, he must pay something back" (Pet. App. 38a-39a).

The Church aggressively promotes its auditing and training programs by means of free lectures, handouts, magazines published by the Church, and newspaper, magazine, and radio advertising. These promotional activities are geared to be responsive to community concerns that are determined from surveys. Pet. App. 29a-31a, 40a. The promotional literature emphasizes the benefits—"gains beyond measure" (J.A. 111)—that an individual will achieve from enrolling in the particular Scientology program. These advertised benefits generally pertain to

[3] The policy letter further states that free services can be awarded only to fully contracted staff, and then only by means of a legal note that makes the staff member liable to the Church for at least $5,000 if the contract is broken (Pet. App. 39a n.6; *Church of Scientology* v. *Commissioner*, 83 T.C. at 416).

increasing one's happiness, control over one's life, and ability to handle other people (see J.A. 107, 109-111). Specifically, the Church's literature claims that its courses teach one "how to correctly study," how to "control anything in life," "how to become more efficient," "how to handle exhaustion," and "an improved memory," and that they "reliev[e] a person of the need for drugs or alcohol" (J.A. 110). The advertisements also promise "friendly, personal service" (J.A. 111) and encourage individuals to take advantage of the advance payment discount and other "savings" on "economical" package arrangements (J.A. 106-107, 120, 127; C.A. App. 101).[4]

2. Each of the petitioners made payments to a branch of the Church of Scientology for auditing or training, or both, and sought to deduct those payments on his or her income tax return as charitable contributions under Section 170 of the Internal Revenue Code.[5] Petitioner Hernandez paid $7,338 to the Church in 1981 and took a deduction in that amount on his 1981 tax return (87-963 Pet. App. 1a-2a). Petitioner Graham paid a total of $1,682 to the Church of Scientology, Hawaii, and to the Scientology and Dianetic Center of Hawaii in 1972 and took a deduction in that amount on her 1972 income tax return. Of that amount, approximately $400 was for a training course and the balance was for auditing; some of the payments towards courses were for Graham's daughters. Pet. App. 40a-41a. Petitioner Hermann made payments of $4,875 to the Church of Scientology, American Saint Hill Organization, in 1975 in order to take the Class 0-9 package of training courses, though he ultimately applied

[4] "C.A. App." refers to the court of appeals appendix filed in the *Hernandez* case.

[5] Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended (the Code or I.R.C.).

the payments to other Scientology courses and auditing. On his income tax return for that year, he took a $3,922 deduction for payments to the Church. *Id.* at 41a. Petitioners Graham and Hermann each testified that they understood that these payments were a prerequisite to receiving the auditing and training that they sought (C.A. App. 283, 288, 321). Petitioner Maynard paid $4,699 to the Church of Scientology, Mission of Riverside, in 1977 as advance payments for auditing and training courses. He took a $5,000 deduction on his income tax return for that year, reflecting a carryover from payments that he had made to the Church in 1976 but had not deducted on his return for that year. Pet. App. 41a.

The Commissioner disallowed these deductions, concluding that the payments to the Church were not "charitable contribution[s]" within the meaning of Section 170 of the Code.[6] Petitioners sought redetermination of the resulting deficiencies in the Tax Court. Petitioner Hernandez's case was not tried, nor was there any evidentiary submission. Instead, petitioner Hernandez entered into a stipulation with the Commissioner (87-963 Pet. App. 44a-45a) to be bound, subject to the right of appeal, by "any relevant findings of fact and conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in the cases of petitioners Graham, Hermann, and Maynard, which were consolidated for trial.[7]

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[6] A "charitable contribution" that may be deducted on one's income tax return is defined in the statute as "a contribution or gift" to or for the use of certain eligible donees, which include qualifying entities "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes * * * " (§ 170(c)(2)(B)).

[7] The government entered into similar stipulations with numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of charitable deductions for payments to the Church of Scientology.

The stipulation further provided that the record in *Graham* would be deemed part of the record in *Hernandez* for purposes of appeal. Accordingly, no facts were developed pertaining to petitioner Hernandez, apart from the information contained on his return that he had made $7,338 in payments to the Church of Scientology in 1981, a fact that the Commissioner had not questioned in his notice of deficiency.

3. A trial was held in the *Graham* case, and the Tax Court upheld the Commissioner's determination with respect to petitioners Graham, Hermann, and Maynard (Pet. App. 36a-46a). The decision was based in part on certain stipulations concerning the Church (see *id.* at 22a-32a). For purposes of this litigation only, the government did not contest that Scientology was a religion and that each Scientology organization to which the *Graham* petitioners paid money was a church within the meaning of Section 170(b)(1)(A)(i) of the Code, a tax-exempt organization under Section 501(c)(3), and an eligible recipient of deductible charitable contributions under Section 170(c)(2) (Pet. App. 31a-32a, 37a). The parties also stipulated to the record in another case that was pending at the time, *Church of Scientology* v. *Commissioner, supra,* which concerned the validity of the "mother" church's tax exemption, and the Tax Court here incorporated all relevant findings of fact from the tax exemption litigation into the opinion in the *Graham* case. Petitioners did not argue that the Scientology entities that received their payments operated differently from the "mother" Church, and accordingly the Tax Court assumed that in these cases the Church operated in the same manner as that reflected in the record in the tax-exemption litigation. Pet. App. 37a.[8]

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[8] These stipulations allowed the charitable deduction cases to go forward without awaiting the final outcome of the litigation over the

In addition to the stipulated facts, the Tax Court made findings of fact pertaining to the operation of the Church based on the record developed at trial (see Pet. App. 37a-41a). The court found that the Church "charge[s] a 'fixed donation' for training and auditing" and that "[w]ith few exceptions, these services are never given for free" (*id.* at 39a (footnote omitted)). The court also stated as a finding of fact that the Church "operates in a commercial manner" in providing its auditing and training services and that its stated "goal of making money permeates virtually all of the Church of Scientology's activities" (*id.* at 40a).

Based on the stipulations and the facts found on the record before it, the Tax Court concluded that the payments in question were not deductible "contributions," but rather were nondeductible payments made to purchase services (Pet. App. 41a-43a). The court explained that "[p]etitioners wanted to receive the benefit of various religious services provided by the Church," but the Church "generally provided those services only if they were purchased" (*id.* at 42a). Noting that advance payment discounts and refunds were available, the court stated that "[p]etitioners thus made payments to the Church in exchange for those services" (*id.* at 43a). The court concluded (*ibid.*): "The record demonstrates clearly that these payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return. In addition, where contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo."

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validity of the "mother" Church's tax exemption. After a lengthy trial, the Tax Court held in that case that the Church failed to qualify as a tax-exempt organization for the years 1970-1972 because it diverted its profits to its founder and other persons, violated public policy by conspiring to impede the collection of its taxes, and conducted virtually all of its activities for a commercial purpose. See *Church of Scientology* v. *Commissioner*, 83 T.C. at 415-423, 473-480. The Ninth Circuit affirmed on the ground that the Church had diverted its profits for the inurement of private persons. It did not address the other grounds relied upon by the Tax Court, and it did not disturb any of the Tax Court's findings of fact. 823 F.2d 1310 (1987).

The court also rejected the contention that the denial of the deductions violated the First Amendment (Pet. App. 43a-46a). The court explained that the denial of a deduction for the payments made for auditing and training services does not "preclud[e] petitioners from engaging in constitutionally protected activities" (*id.* at 44a). The court also found that Section 170 establishes neutral "secular criteria" for determining the deductibility of payments to charitable organizations and hence does not unconstitutionally discriminate among religions (*id.* at 45a-46a). Finally, the court rejected petitioners' contention that the denial of the deductions resulted from "selective discriminatory action," finding no evidence that any discriminatory action was taken against petitioners (*id.* at 46a).

Following the entry of decisions sustaining the deficiencies in *Graham* (Pet. App. 33a-35a), the Tax Court entered a decision sustaining the deficiency in *Hernandez* "on the authority of *Graham*" (87-963 Pet. App. 43a).

4. a. The First Circuit affirmed the Tax Court's decision in *Hernandez* (87-963 Pet. App. 1a-28a). The court stated (*id.* at 5a) that its inquiry into whether the payments were "contribution[s] or gift[s]" within the meaning of Section 170 of the Code was framed by this Court's recent analysis of that question in *United States* v. *American Bar Endowment*, 477 U.S. 105, 118 (1986): "The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he pur-

posely contributed money or property in excess of the value of any benefit he received in return." The court rejected petitioner's contention that this inquiry into whether a particular payment was a contribution or, instead, part of a quid pro quo arrangement did not apply to payments for religious services. The court stated (87-963 Pet. App. 6a): "We find no indication that Congress intended to distinguish the religious benefits sought by [petitioner] from the medical, educational, scientific, literary, or other benefits that could likewise provide the *quid* for the *quo* of a nondeductible payment to a charitable organization." The court noted that petitioner Hernandez had not argued that he paid any part of the price for the services with the intention of making a gift to the Church or that his intentions were any different from those of the *Graham* petitioners, who the Tax Court found had made the payments with the expectation of receiving a commensurate return benefit (*id.* at 5a, 8a). The court also noted that the Church itself had established the prices for the services and that petitioner Hernandez had not argued that those prices were excessive (*id.* at 8a). Accordingly, the court concluded that, on the record before it, including the factual findings in *Graham,* petitioner Hernandez had "failed to shoulder [his] burden" of demonstrating that the payments in question were in fact charitable contributions (*id.* at 9a).

The court also rejected petitioner Hernandez's constitutional claims (87-963 Pet. App. 9a-28a). The court held that Section 170 does not create any denominational preferences on its face (87-963 Pet. App. 9a-10a) or as applied in this case (*id.* at 10a-15a). The court explained that the statute is neutral (*id.* at 14a): "gifts to all charitable organizations are tax deductible; *quid pro quo* payments are not." The court also held that the denial of a deduction did not violate petitioner's rights under the Free Exercise

Clause to make "fixed donations" in exchange for auditing and training classes (*id.* at 15a-24a). The court questioned whether the practice of making payments in exchange for auditing and training services was required by religious doctrine (*id.* at 17a-19a), but held that, in any event, the denial of a tax deduction for the payments did not require petitioner Hernandez to abandon that practice (*id.* at 19a-21a). The Court further stated that recognition of a First Amendment right to make tax-deductible payments in exchange for religious services would compromise the effectiveness and fairness of the tax system (*id.* at 23a-24a). The court also held that petitioner had not shown that he was the victim of selective prosecution in connection with the denial of the claimed deduction (*id.* at 24a-28a).

b. The Ninth Circuit affirmed the Tax Court's decision in *Graham* (Pet. App. 1a-18a). The court upheld the Tax Court's holding that the payments to the Church were not deductible contributions under Section 170, holding that the Tax Court applied the correct legal standards and that its factual findings were not clearly erroneous (*id.* at 7a-11a). The court of appeals explained that there is no contribution if a "measurable, specific return comes to the payor as a quid pro quo for the donation," finding that this formulation accords with that set forth in this Court's decision in *United States* v. *American Bar Endowment, supra,* (Pet. App. 8a). Thus, the court stated that "[i]t is the structure of the transaction, and not the type of benefit received, that controls"; "[i]f a transaction is structured in the form of a quid pro quo, where it is understood that the taxpayer's money will not pass to the charitable organization unless the taxpayer receives a specific benefit in return, and where the taxpayer cannot receive the benefit unless he pays the required price, then the transaction does not qualify for the deduction under section 170" (*ibid.*). The court rejected petitioner's contention that this approach does not apply to payments for religious benefits

or services, stating that "[t]he inquiry remains whether the donation is intended to benefit the charity without reference to a reciprocal and specific benefit to the donor, whether or not the benefit is religious" (*id.* at 9a).

The Ninth Circuit found that the evidence in the record was "fully sufficient" to justify the Tax Court's "determination of fact" that the payments to the Church were not contributions. Specifically, the court pointed to the following factors: "[s]olicitation for the services and agreements to render them based on price; conformity in price lists, and graduated prices based on the level of instruction; the contractual right to receive the service, and the right of refund if the service was not performed; account cards; and discounts for advance payments." These facts "all underscore that the payment matched, with some precision, the benefits to be received." Examining the testimony of the *Graham* petitioners, the court also found that petitioners "looked upon their donations as payments made for the quid pro quo receipt of a definite number of hours of auditing or training." Pet. App. 10a.

The court of appeals also rejected petitioners' constitutional claims (Pet. App. 11a-18a). The court held that, even if it assumed that payment for auditing and training was compelled by religious practice (which the court believed was not established by the record (*id.* at 13a-15a)), the denial of a tax deduction for such payments did not burden the exercise of petitioners' religious beliefs in violation of the Free Exercise Clause (*id.* at 15a-17a). The court also found no Establishment Clause violation, reasoning that Section 170 is "neutral in design and purpose" and reflects no intent "to visit a disability on a particular religion" (*id.* at 18a). And the court rejected the contention that the denial of the deductions was a result of discriminatory enforcement of the tax laws (*ibid.*).[9]

[9] In addition to the courts of appeals below, five other courts of appeals have ruled to date on the deductibility of payments made to the Church of Scientology akin to those made by petitioners. Each of these cases was decided on the basis of the same stipulation entered into by petitioner Hernandez to adopt the record and findings in the *Graham* case. Three courts of appeals reversed the Tax Court and held that the payments are deductible under Section 170. *Neher* v. *Commissioner*, No. 86-1275 (6th Cir. July 19, 1988); *Foley* v. *Commissioner*, 844 F.2d 94 (2d Cir. 1988), petition for cert. pending, No. 88-102; *Staples* v. *Commissioner*, 821 F.2d 1324 (8th Cir. 1987), petition for cert. pending, No. 87-1382. Two courts of appeals have joined the courts below in affirming the Tax Court and holding that the payments are not deductible. *Christiansen* v. *Commissioner*, 843 F.2d 418 (10th Cir. 1988), petition for cert. pending, No. 87-2023; *Miller* v. *Commissioner*, 829 F.2d 500 (4th Cir. 1987), petition for cert. pending, No. 87-1449. No court has found any constitutional infirmity in the Commissioner's determination to disallow the deduction.

SUMMARY OF ARGUMENT

I.

A. Section 170 of the Code permits a taxpayer to deduct from his gross income the amount of a "contribution or gift" made to certain eligible donees. It is well settled that that phrase encompasses only genuine contributions, not payments made for the purpose of receiving a commensurate benefit in return. Whether a particular payment is a contribution or part of a quid pro quo arrangement is a case-specific issue that turns on an assessment of all the facts and circumstances surrounding the particular payment.

B. The record in this case clearly demonstrates that, as the Tax Court and both courts of appeals below found, petitioners' payments to the Church were part of a quid pro quo arrangement to receive auditing and training services in exchange. The Church marketed and provided these services in a manner indistinguishable from the way any

other commodity is offered for sale in the marketplace—to advance its major policy goal of "mak[ing] money" (see Pet. App. 40a). The services were heavily promoted to the general public, emphasizing the personal benefits that would accrue to an individual in his daily life if he enrolled. The Church sought to attract purchasers by advertising the savings available on "package deals" and other discounts, and by emphasizing the personal benefits of large quantities of auditing. And the promotional literature promised refunds to dissatisfied customers.

Moreover, auditing and training courses were provided "only if they were purchased" (Pet. App. 42a). The Church maintained a strict policy against price cuts or the provision of free services, though it did allow refunds for unused services under certain conditions. The result was a textbook quid pro quo arrangement—a structure in which it was understood that petitioners' money would "not pass to [the Church] unless [they] receive[d] a specific benefit in return" and where petitioners could not "receive the benefit unless [they paid] the required price" (see Pet. App. 8a). Petitioners' testimony at trial confirmed their understanding that they could receive auditing and training only by purchasing the services at the price fixed by the Church. Because the payments in question were made by petitioners not as contributions but in order to secure the benefits of auditing and training, the payments are not deductible under Section 170.

C. Section 170 does not contain an exception for payments made in exchange for religious benefits. The requirement that a payment qualify as a "contribution or gift" in order to be deductible is a threshold one that applies to payments made to any eligible donee, and there is no basis for treating religious organizations differently for this purpose from the other types of charitable organizations listed in Section 170(c)(2). The fact that the payments

for auditing and training here may have furthered the purposes of the Church provides no basis for distinguishing them from payments made to other tax-exempt organizations in exchange for specific benefits. Whether the exempt organization is religious or secular, such payments may serve to further "charitable" purposes under Section 170, but the payments are not deductible contributions under Section 170.

The IRS has recognized that there may be "incidental" benefits received by an individual as a result of a charitable contribution that do not render that payment nondeductible, but the services received by petitioners as a quid pro quo in this case are not "incidental" in that sense. In the secular context, the IRS has found that recognition of a donation and certain attributes of membership are incidental benefits; in the religious context, the IRS has stated in a ruling that the saying of mass or the conduct of similar religious observances is a benefit to all members of the faith and any benefit to a given family is incidental. The latter conclusion is an application of general principles to a particular fact situation; contrary to petitioners, it does not stand for the proposition that all religious benefits must be treated as "incidental." The facts of this case show that the benefits paid for by petitioners were more than "incidental." The Church's promotional literature and enrollment form promised personal, individual benefits; there is no basis for concluding that petitioners' payments for these courses were intended to, or did, provide any significant broader-based benefits than those advertised by the Church.

The determination whether a religious benefit has been received as a quid pro quo for a payment depends on the circumstances surrounding the payment and the provision of the benefit. The fact that a religious benefit may have no value to one who is not an adherent of the religion does

not mean that the benefit must be ignored under Section 170 when it is structured as part of an inflexible quid pro quo arrangement. In this case, the rigid connection between the provision of auditing and training services and payment of the fixed price demonstrated a quid pro quo relationship and reflected the value that petitioners expected to receive for their money.

There is no administrative practice recognizing that payments made in exchange for religious benefits are tax-deductible. For example, the IRS has consistently challenged the deductibility of payments made to obtain religious schooling. The rulings cited by petitioners, relating to church dues and pew rents, reflect an effort by the IRS to apply to particular fact situations the same principles that are applied to payments to other tax-exempt organizations. Those principles point to the opposite result on the record in this case. While the IRS has reasonably concluded that church dues and pew rents ordinarily are intended as contributions, not for "personal accommodation," the record here clearly shows that the petitioners' payments were made for personal accommodation, "with the expectation of receiving a commensurate benefit in return" in the form of personal, individual services (Pet. App. 43a).

Petitioners' citation (Pet. Br. 18-25) to diverse fund-raising practices of other religions provides no basis for doubting the correctness of this conclusion. The practices described by petitioners, most of which have not been passed upon by the IRS, cover a spectrum—some are deductible, some may not give rise to a deduction, others may be "close to the line" (*Foley* v. *Commissioner*, 844 F.2d 94, 99 (2d Cir. 1988), petition for cert. pending, No. 88-102 (Newman, J., dissenting)). What they have in common is that they are all significantly different from the commercial, inflexible quid pro quo arrangement at issue here. Neither the IRS nor the courts have allowed a deduction for quid pro quo payments that can reasonably be analogized to the ones at issue here, and petitioners' attempt to bring the facts here under the umbrella of an established administrative practice is misconceived.

II.

The denial of petitioners' claimed deductions does not violate the First Amendment. Section 170 sets forth a neutral, secular standard in limiting deductions to genuine contributions; application of that standard involves no impermissible denominational preference. The failure to create a special statutory exception that would permit deduction of payments for auditing and training does not impermissibly burden the exercise of petitioners' faith; the relatively light burden of denial of a tax advantage is clearly outweighed by the importance of maintaining even-handed administration of the tax laws. The quid pro quo inquiry into the circumstances surrounding the payment and the provision of the benefit does not necessitate an unconstitutional entanglement between church and state.

ARGUMENT

THE COURTS BELOW CORRECTLY HELD THAT THE COMMISSIONER ACTED CONSTITUTIONALLY AND IN ACCORDANCE WITH THE STATUTE IN DETERMINING THAT PETITIONERS COULD NOT DEDUCT FROM GROSS INCOME PAYMENTS THEY MADE TO THE CHURCH OF SCIENTOLOGY

I. Petitioners' Payments To The Church Of Scientology For Auditing And Training Are Not Deductible From Gross Income As "Contribution[s] Or Gift[s]" Under Section 170 Of The Internal Revenue Code

The Internal Revenue Code generally makes an individual's income subject to taxation, but it also affords income tax deductions for certain types of expenditures.

Those deductions are purely a creation of statute and their availability is subject to the limitations established by Congress in the Code. Section 170 allows an individual to deduct "contribution[s]" to certain eligible donees, including certain religious, educational, and scientific organizations. It is well established that a payment to an eligible donee is not a deductible contribution if it is made with the expectation of receiving a commensurate benefit in return, *i.e.*, if the payment is made as part of a quid pro quo arrangement for the receipt of particular goods or services. The Tax Court and both courts of appeals below found that the record in this case establishes that petitioners' payments to the Church of Scientology were part of precisely such a quid pro quo arrangement; the payments—in the amounts fixed by the Church—were an absolute prerequisite to receipt of the auditing and training services that petitioners desired and the payments were made with the expectation of receiving those services in exchange.

Petitioners do not seriously dispute the factual conclusion that the payments were made as part of a quid pro quo arrangement for the receipt of services. Petitioners maintain, however, that this fact is irrelevant because the benefits they received were religious services for which payments must be deductible even if they are made as part of a quid pro quo. Section 170, however, which governs the scope of the charitable contribution deduction, provides no basis for excepting payments for religious services from the requirements applicable to payments for other services provided by tax-exempt organizations. Nor do constitutional considerations or any established administrative construction of the statute justify such an exception. Accordingly, the courts below correctly rejected petitioners' claimed deductions for their payments to the Church.

A. The Deductibility Of A Payment To A Charitable Organization Turns Upon The Factual Question Whether The Payment Is Part Of A Quid Pro Quo Arrangement For The Purchase Of Benefits Or Is Instead A Genuine Contribution

Section 170(a) allows a taxpayer to deduct a "charitable contribution" from his gross income. Section 170(c) defines that term as a "contribution or gift" to certain eligible donees, including organizations "operated exclusively for religious, charitable, scientific, literary, or educational purposes" that otherwise meet the statutory qualifications (I.R.C. § 170(c)(2)). The key phrase "contribution or gift" is not further defined in the Code. The legislative history of the 1954 Code, however, clearly indicates Congress's understanding that the term encompasses only payments that are "made with no expectation of a financial return commensurate with the amount of the gift" or of any "quid pro quo." S. Rep. 1622, 83d Cong., 2d Sess. 196 (1954); H.R. Rep. 1337, 83d Cong., 2d Sess. A44 (1954). It is thus well settled that determining the deductibility of a payment under Section 170 involves a factual inquiry into whether the payment is a contribution or instead a purchase of goods or services; and it is recognized that drawing the line between these two categories of payments can be a difficult task that "requir[es] an assessment of all the facts and circumstances." See generally 2 B. Bittker, *Federal Taxation of Income, Estates and Gifts* ¶ 35.1.3 (1981); *id.* at 35-9.

The case law developed under Section 170 illustrates the dichotomy between payments to a charity in exchange for services and a true contribution. For example, in *Sedam* v. *United States,* 518 F.2d 242 (7th Cir. 1975), the court disallowed a charitable contribution deduction claimed for a payment made to a retirement home. The payment was required as a condition of admitting the taxpayer's mother to the home, and the court reasoned that "a payment is not

a contribution or gift under section 170 if it is made with the expectation of receiving a commensurate benefit in return" (*id.* at 245). By contrast, in *Dowell* v. *United States,* 553 F.2d 1233 (10th Cir. 1977), the court allowed a deduction for a payment to a retirement home where there was not the same nexus between the payment and receiving admission to the home. The court explained that there was lacking a "direct gain or benefit to the donor such as that found in *Sedam*" (*id.* at 1239), and it emphasized that the outcome must be "predicated entirely on the facts in evidence and the circumstances reflected in the record of *this* case" (*id.* at 1237-1238 (emphasis in original)).

The fundamental distinction between a contribution and a quid pro quo arrangement—and the degree to which deductibility turns on the particular facts—is similarly illustrated by *Singer Co.* v. *United States,* 449 F.2d 413 (Ct. Cl. 1971). In that case, the taxpayer sold its sewing machines at a discount to churches, hospitals, and schools, and sought to deduct the amount of the discount as a charitable contribution. The court of appeals allowed the deduction for the machines that went to the churches and hospitals, reasoning that the taxpayer's primary purpose was to foster the charitable activities of the recipients; the "favorable public image" that resulted from these discount sales was viewed as only an "incidental" benefit, not a quid pro quo that would be inconsistent with a gift (*id.* at 424). The court denied a deduction for the discounts on the machines given to the schools, however, reasoning that the predominant motive for those transfers was to encourage the students to buy the taxpayer's sewing machines in the future. The court held that this was a "substantial" and specific return benefit quite apart from that which ordinarily inures to a charitable contributor. With respect to the transfers to the schools, the court concluded that "the transferor has received, or expects to receive, a *quid pro quo* sufficient to remove the transfer from the realm of deductibility under section 170" (*id.* at 423).

This Court's recent decision in *United States* v. *American Bar Endowment,* 477 U.S. 105, 116-118 (1986), reflects the same distinction between a quid pro quo arrangement and a genuine contribution. The taxpayers there sought to deduct under Section 170 part of their payments to a charitable organization for insurance coverage, contending that the excess of their premiums over the cost to the organization of providing the insurance qualified as a "contribution or gift" within the meaning of the statute. As a condition of participating in the group insurance program, the policyholders were required to agree that the organization could retain that excess (which was refunded by the insurance company), rather than distributing it to the policyholders. The Court denied the claimed deduction. Citing *Singer Co.* v. *United States, supra,* the Court stated that "[a] payment of money generally cannot constitute a charitable contribution if the contributor expects a substantial benefit in return" (477 U.S. at 116). The Court further explained (*id.* at 118): "The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return." The Court agreed with the trial court that, as a factual matter, the individuals had made payments for the quid pro quo of acquiring insurance coverage and that the taxpayers had not shown that the amount of the payments exceeded the value of the benefits received (see *id.* at 109, 118). Accordingly, the Court concluded that the taxpayers had not carried the burden of proof required to obtain a charitable deduction, *i.e.,* they did not "demonstrate that [they] in-

tentionally gave away more than [they] received" (*id.* at 118).

By its terms, Section 170 allows a deduction to be taken only for a "contribution or gift," regardless of the type of organization to which the payment is made. Thus, if the record demonstrates that the payments made to the Church by petitioner were not contributions but rather were in exchange for services to be rendered to them, as the courts below found, the payments were not "contributions," and Section 170 does not provide a basis for deducting them. In that event, petitioners have failed to carry their burden of establishing their entitlement to a deduction, because they are not "able to point to an applicable statute and show that [they] come[ ] within its terms" (*New Colonial Ice Co.* v. *Helvering*, 292 U.S. 435, 440 (1934)).

B. The Record Supports The Findings Of The Courts Below That Petitioners' Payments To The Church Were Not Contributions But Were Part Of A Quid Pro Quo Arrangement To Purchase Specific Services

The Tax Court found that, on the basis of the record of these cases as a whole, the payments to the Church were not contributions, but rather were made in exchange for the quid pro quo of auditing and training services. The court relied on evidence adduced as to both the structure of the system that provides these services for a "fixed donation" and petitioners' expectations in making the payments. The Tax Court's factual conclusion, affirmed by both courts of appeals below, is fully supported by the record.

The undisputed evidence in this case shows that auditing and training services were marketed by the Church and purchased by petitioners just like any other commodity that is offered for sale in the marketplace. One of the

Church's primary goals articulated in its policy statements is to "make money," [10] and the Tax Court found that this goal "permeates virtually all of [its] activities," including the provision of auditing and training services (Pet. App. 40a). To further this goal, the Church heavily promoted its services, not merely as an informational matter to its parishioners, but to the general public by means of flyers and radio and newspaper advertising (*ibid.*). The promotions emphasized the benefits that would accrue to an individual in his daily life if he purchased the Church's services—including improvement of study habits, efficiency, memory, and the ability to handle other people (see J.A. 110)—thereby seeking to make the services attractive to persons having no prior connection to or involvement with the Church. Indeed, the promotions were specifically geared to address community concerns that had been determined by surveys (Pet. App. 40a).

Like its promotional activities, the Church's pricing policies mirrored those of other retail businesses in seeking to advance the goal of making money. The Church offered a 5% advance payment discount and in its literature strongly urged individuals to take advantage of this discount (see J.A. 106-107). Moreover, the Church made efforts to persuade individuals to subscribe to large quanti-

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[10] The Church's Governing Policy of Finance was set forth in a policy letter, dated March 9, 1972. That letter listed several aspects of the policy and emphasized four of those by printing them in block letters. The emphasized goals were:

A. MAKE MONEY
J. MAKE MONEY
K. MAKE MORE MONEY
L. MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY

See *Church of Scientology* v. *Commissioner*, 83 T.C. at 422; Pet. App. 40a.

ties of auditing and training courses, at considerable expense. Its pricing structure incorporated a quantity discount in that the price per hour of auditing intensives declined as the number of hours increased (see J.A. 97, 111-112), and the Church offered and heavily promoted the "savings" available on "package" deals (see J.A. 115, 120, 127; C.A. App. 101). Apart from the price discount, the advertising strongly emphasized the benefits to be gained from taking "a *lot* of continuous auditing," characterizing that as "[t]he key to total freedom and happiness" that would yield "more gains than you dreamed possible" (J.A. 111 (emphasis in original)). Finally, the Church sought to attract customers for its services by promising that "[a]ll fees [would be] promptly refunded to any dissatisfied student" (see J.A. 97).[11]

Furthermore, auditing and training courses were provided to individuals "only if they were purchased" (Pet. App. 42a) at the prices fixed by the Church. Those prices were almost never discounted or waived.[12] This strict

[11] In fact, the enrollment contract that individuals were required to sign in order to receive auditing and training services stated that refunds would be available only for services not provided, and therefore not in the event of dissatisfaction with services that were provided, and even those refunds were subject to certain conditions. See J.A. 104-105, 133.

[12] The only apparent exception to this practice of never providing auditing and training services for less than full price was the availability of free services to fully contracted staff. That free service, however, was conditioned upon the staff member's executing a legal note that would make him liable to the Church if he broke his employment contract. Pet. App. 39a n.6. In that event, the former staff member was termed a "freeloader" and was obligated to pay the Church the greater of the value of the free services received or liquidated damages of $5,000. *Church of Scientology* v. *Commissioner,* 83 T.C. at 416.

policy against provision of auditing or training courses without full payment of the prices set by the Church was strongly communicated throughout the organization in Church policy letters, which stated that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 39a n.6) and characterized attempts to reduce prices as "high crime[s]" and "suppressive acts" (*Church of Scientology* v. *Commissioner,* 83 T.C. at 416 n.21). And the Church's practice of allowing refunds for unused services was consistent with this overriding policy of linking the provision of services to the payment of the full prices fixed by the Church. In sum, the record fully supports the Tax Court's finding that the Church "operate[d] in a commercial manner" in providing its services (Pet. App. 40a). Just like the typical seller of a commodity in the marketplace, the Church promoted its product, sought to induce customers to purchase it in large quantities, made it available to anyone willing to pay the full purchase price, and categorically refused to provide it to persons who would not pay that full price.[13]

The Church's approach to marketing and providing its services can leave little doubt in the mind of an interested individual that, in order to obtain the services, one must provide full payment in exchange; the record here shows that petitioners fully understood this quid pro quo arrangement and made their payments accordingly. Peti-

[13] As the Tax Court noted in *Church of Scientology* v. *Commissioner,* 83 T.C. at 422-423, the Church's organizational material was suffused with business terminology. One of its policy letters directed at the issue of Church solvency exhorted its branches to make certain that the "Introductory Lecture * * * makes people want to buy training and processing" and advised that the Department of Field Training should be treated "as salesmen are handled by any other business org." (*id.* at 423).

tioner Graham acknowledged in her testimony that she understood that she could not have taken the training courses that she desired without having paid the "fixed donation" (C.A. App. 288-289). Similarly, petitioner Hermann acknowledged that he understood that he could not have enrolled in the "class 9 package" of training without joining the staff of the Church or "donating" the price charged for the course (*id.* at 321).

The bookkeeping for the payments also reflected the common understanding that they were part of a quid pro quo arrangement for the receipt of auditing and training. On one of petitioner Hermann's checks to the Church, he had written the following (J.A. 113): "Down payment on vital information rundown, total price $500; balance to be added on to balance of class IX package. Next payment of $100 due Nov. '75." Other of his checks carried notations designating the class 9 package as the one for which the payments were being made (C.A. App. 119-120), and one was annotated "Package Payoff" (J.A. 113). Petitioner Graham received a "billing" for 8½ hours of auditing (J.A. 96), which she understood as detailing "what [she] owed the church" (C.A. App. 289). Petitioner Maynard signed a "Customer's Order" form, acknowledging his understanding that "it contains the basis upon which the above religious services of auditing and/or training are delivered by the Church"; that basis, according to the form, was the "sale" to him of a particular course at the designated "price at time of purchase" (J.A. 129-130).

Thus, the record establishes a direct and inflexible connection between the payments made by petitioners and the auditing and training services they received. Petitioners' transactions fall unmistakably into the category of a quid pro quo arrangement as defined by the Ninth Circuit below, namely "where it is understood that the taxpayer's money will not pass to the charitable organization, unless

the taxpayer receives a specific benefit in return, and where the taxpayer cannot receive the benefit unless he pays the required price" (Pet. App. 8a). On this record, the courts below all found that the payments had been made as part of a quid pro quo arrangement in exchange for the services received (see Pet. App. 10a, 43a; 87-963 Pet. App. 5a, 9a). The Fourth Circuit, reviewing the same record, cogently explained why this conclusion is inescapable:

> The transactions at issue in this appeal were unequivocally structured as payments made with the expectation of a commensurate return benefit. The Church advertised its auditing sessions, published price lists, and refused to provide the sessions without payment. The Church recognized the member's contractual right to receive the service and refunded payments if the sessions were not performed. * * * Since the Church member does not receive the service unless she pays the scheduled fee, the service, however labelled or analogized, is a quid pro quo for the payment and the payment is not 'charitable.'

Miller v. *Commissioner*, 829 F.2d 500, 503 (1987), petition for cert. pending, No. 87-1449. See also *Christiansen* v. *Commissioner*, 843 F.2d 418, 421 (10th Cir. 1988), petition for cert. pending, No. 87-2023 ("examination of the structure of these payments clearly reveals that they were made on a quid pro quo basis for services"); *Foley* v. *Commissioner*, 844 F.2d 94, 98-99 (2d Cir. 1988), petition for cert. pending, No. 88-102 (Newman, J., dissenting) ("Auditing sessions are advertised, priced, and marketed by the seller and bought by the customer as specific benefits for the purchaser, and the Tax Court could hardly have found otherwise."). Under established principles of law, therefore, the payments made by petitioners to the Church of Scientology were not "contributions or gifts" and hence not deductible under Section 170.

C. Section 170 Does Not Except Payments For Religious Benefits From The General Requirement That A Payment Be A "Contribution," Rather Than Part Of A Quid Pro Quo Arrangement, In Order To Be Deductible

Petitioners do not seriously dispute that the payments they made to the Church were part of a quid pro quo arrangement to receive auditing and training services. Instead, they maintain that this fact is irrelevant because the benefits they received were religious in nature. Petitioners contend that payments to tax-exempt religious organizations are treated differently from payments to other eligible donees under Section 170—that even if a payment to a religious organization is made to obtain a benefit, it is a "contribution," so long as the benefit received is a religious one. The courts of appeals that have reversed the Tax Court on the statutory issue presented here have similarly maintained that Section 170 embodies a distinction between secular and religious benefits. See *Neher* v. *Commissioner,* No. 86-1275 (6th Cir. July 19, 1988); *Foley* v. *Commissioner,* 844 F.2d 94 (2d Cir. 1988), petition for cert. pending, No. 88-102; *Staples* v. *Commissioner,* 821 F.2d 1324 (8th Cir. 1987), petition for cert. pending, No. 87-1382. Those courts have primarily based this holding on special properties that they find inherent in religious benefits, which, coupled with the policies underlying Section 170, suggest that payments to obtain such benefits must be tax-deductible. Petitioners, on the other hand, primarily rest their argument on two related assertions—that for 70 years the IRS has consistently administered Section 170 by drawing a distinction between religious benefits, on the one hand, and "benefits sold in the secular marketplace" (Pet. Br. 32), on the other hand, and that the payments made by petitioners in this case are indistinguishable from payments made to other religious organizations by their adherents that are universally recognized

as tax-deductible (see *id.* at 10-32). The courts below correctly rejected these arguments and held that Section 170 does not except payments for religious benefits from the general rule that a quid pro quo arrangement for the receipt of benefits is not a "contribution."

1. *There is Nothing in Section 170 or Inherent in the Nature of Religious Benefits that Justifies Excepting Payments for Such Benefits from the Rule that a Payment Made Specifically to Obtain a Commensurate Benefit in Return is not Deductible*

a. The terms of Section 170 plainly offer no support for petitioners' contention that payments to religious organizations in exchange for religious benefits are inherently different from payments to other eligible donees under Section 170(c)(2). Section 170 allows a deduction for a "contribution or gift" to the types of organizations listed, including "religious, charitable, scientific, literary, or educational" organizations (I.R.C. § 170(c)(2)). Thus, it is a threshold requirement that the payment be a "contribution or gift," *i.e.,* a genuine donation rather than a payment in exchange for particular benefits—regardless of what type of organization is the recipient of the payment. In the absence of any special status explicitly conferred by statute, religious institutions will ordinarily be viewed as standing on an equal footing in the contemplation of the tax law with the other charitable organizations named in Section 170(c)(2). For example, in *Bob Jones University* v. *United States,* 461 U.S. 574 (1983), this Court held that a religious school, like other types of tax-exempt organizations, must meet the common law description of "charitable" in order to qualify as exempt under Sections 170(c)(2) and 501(c)(3) of the Code. See also *Walz* v. *Tax Commission,* 397 U.S. 664, 673 (1970); *id.* at 687-689 (Brennan, J., concurring).

The Sixth Circuit in *Neher* suggested that the payments for auditing and training obtained here must be viewed as deductible because they "furthered the charitable purposes of the Church * * * [as the] predominant means of raising money to support its activities" (slip op. 12). See also *Staples,* 821 F.2d at 1327 (relying on "inherently charitable nature of strictly religious practices"). But that reasoning is fallacious, and it provides no basis for distinguishing between payments for religious benefits and those for other kinds of benefits. All of the organizations listed as eligible donees in Section 170(c)(2) are obliged to operate for "charitable purposes" and to put the public interest above the private interest; that is the basis for retaining their tax exemption. See *Bob Jones University* v. *United States,* 461 U.S. at 591. Thus, a payment to a school, a hospital, a museum, or any other organization included in Section 170(c)(2) goes to further the "charitable purposes" of the organization just as surely as a payment to a religious organization. In either case, Section 170 provides that the payment may be deducted if, but only if, it is a "contribution"—*i.e.,* it is not a quid pro quo in exchange for a specific benefit. In short, as the Ninth Circuit below concluded, "[t]he statute cannot be read to permit religions to offer a deductible quid pro quo while other charitable organizations may not" (Pet. App. 9a). See also *Hernandez,* 87-963 Pet. App. 6a; *Christiansen,* 843 F.2d at 420; *Miller,* 829 F.2d at 503-504.

b. Petitioner argues (Br. 35) that the receipt of a religious benefit cannot serve as a quid pro quo that would render nondeductible the payment for that benefit because "individual religious benefits are by law treated as 'incidental.' " This assertion is echoed by the courts of appeals that have agreed with petitioner. See *Foley,* 844 F.2d at 96; *Staples,* 821 F.2d at 1326. But the premise of this argument is incorrect. Neither the courts nor the IRS has ever

recognized a general principle to the effect that any religious benefit received by an individual must be regarded as a matter of law as primarily a public benefit of only "incidental" value to him. Such a principle would not comport with reality, and that point could not be more starkly illustrated than by the facts of this case.

The courts and the IRS have recognized that there may be "incidental" benefits received by an individual as a result of a charitable contribution that do not render that contribution nondeductible. That is an inevitable consequence of the fact that individuals usually have some reason for acting and therefore any contribution almost certainly provides some return to the donor, perhaps in the form of enhanced reputation or internal satisfaction for advancing a worthy cause. See *Neher,* slip op. 11. Obviously, that has much to do with why different people choose to contribute to different organizations. Accordingly, the IRS has been required to engage in drawing lines between benefits that are "incidental," such as "the satisfaction of fostering a worthy cause, even if the donor's name is memorialized by a cornerstone or professorial chair" (B. Bittker, *supra,* at 35-8), and benefits that constitute the kind of quid pro quo that disqualifies the payment as a contribution under Section 170. In particular, the IRS has grappled with this distinction in the context of membership dues, ruling that privileges such as the right to vote, hold office, or become known as a benefactor, are "incidental," but the right to discounts or to attend exclusive events is not. See *id.* at 35-9; Rev. Rul. 77-160, 1977-1 C.B. 351; Rev. Rul. 68-432, 1968-2 C.B. 104; Rev. Rul. 55-70, 1955-1 C.B. 506.

Thus, it is apparent that the concept of "incidental" benefits is not unique to the provision of religious benefits. Rather, the concept has been applied on a case-by-case basis to many different kinds of benefits provided by

charitable organizations, including both secular and religious benefits. In one of its rulings concerning a payment claimed as a contribution to a religious organization, the IRS has stated: "[T]he saying of mass or the conduct of similar religious observances under the tenets of a particular religion are of a spiritual benefit to all the members of that faith and to the general public. Any private benefit to a given family or individual that may result is regarded as merely incidental to the general public benefit that is served" (Rev. Rul. 71-580, 1971-2 C.B. 235, 236). But this conclusion is a factbound one addressed to masses or "similar religious observances"; contrary to petitioner's assertion (Br. 35), it plainly does not stand for the proposition that all religious benefits must be treated as "incidental."

On the record of this case, there is no basis for concluding that the individual benefits paid for and received by petitioner were merely "incidental" to a broader benefit received by the general public or other members of the Church of Scientology. The benefits attributed by the Church to the receipt of auditing and training were quintessentially personal, relating to such matters as the improvement of one's memory, efficiency, study habits, family life, and ability to handle other people (see, *e.g.*, J.A. 110, 111). Indeed, the Church's literature, in exhorting people to subscribe to a *lot* of auditing, emphasized that one should "[m]ake certain you get a lot *for yourself*" (J.A. 111 (emphasis in original)). The enrollment form signed by applicants for Church programs states that "the benefits obtainable from Church services * * * are personal and are experienced by the individual himself or herself" (J.A. 132). On the other hand, it is not apparent that an auditing session for a particular individual was believed to yield any significant benefit to other members of the Church. Thus, the record in this case indicates that partici-

pants in the Church's auditing and training sessions paid for and received "far more than incidental benefits" (*Foley*, 844 F.2d at 98 (Newman, J., dissenting)). See also Pet. App. 10a-11a.

c. Petitioners contend (Br. 37-41) that only secular benefits can be considered part of a quid pro quo for a payment because religious benefits have no "calculable financial or economic value" (Br. 39). This argument is also made by the courts of appeals that have reversed the Tax Court on this issue. See *Neher*, slip op. 15; *Foley*, 844 F.2d at 97; *Staples*, 821 F.2d at 1327. This objection lacks substance, however, because the ascertainment of a benefit's intrinsic "financial or economic value" is not an element of the inquiry into whether a payment for that benefit is a genuine contribution that is deductible under Section 170. Many, if not all, commodities cannot be said to have an intrinsic economic value; rather, their "value" is ascertained by what people are required and willing to pay for them. When religious benefits are provided in a setting that is essentially indistinguishable from the setting in which other commodities are provided, the benefits have a "value" in the same way. Even if the ultimate benefit to be derived from the religious services is spiritual, as opposed to the more material benefits that are the motivation for purchasing other types of commodities, that does not defeat the possibility that the religious services may be provided on a quid pro quo basis in which the value to the purchaser is reasonably measured by the price he must pay for the services. When the facts demonstrate such a quid pro quo arrangement, Section 170 does not allow a deduction for the payment. As the Ninth Circuit below remarked on this point (Pet. App. 9a): "The test is not the economic character of what the payor receives but whether there is a specific, measurable quid pro quo for the donation in question. Though the economic aspect of a reward

makes it easier to identify such a transaction, it is not a precondition to application of the test."

The ultimate question is whether the payment claimed to be a contribution "is intended to benefit the charity without reference to a reciprocal and specific benefit to the donor" (Pet. App. 9a). In some cases, that question can be answered quite clearly by examining the structure created by the organization for the provision of that benefit, *i.e.*, the circumstances under which the payment is made and the benefit received. That is the case here. The Church established a firm tie between the provision of auditing and training services and the payment of the advertised price for those services. On the one hand, the services would not be provided unless payment was made; on the other hand, payment of the advertised price entitled an individual to receive the services. That is undeniably a description of a quid pro quo arrangement, which does not give rise to a charitable contribution deduction.[14]

[14] There will, of course, be cases where the value of a benefit may be ascertainable by evidence other than the transaction in question—for example, where the benefit is offered by someone other than the organization to which the taxpayer made the payment. The existence of such an externally ascertainable value is not restricted to the secular context; items that have no purpose or "value" other than for use in religious services are often sold in stores. Reference to the value of a service that is ascertained by looking outside the particular transaction can be relevant to the Section 170 inquiry. When a taxpayer makes a payment to an organization and receives a valuable benefit therefrom, it may sometimes be inferred that there is a quid pro quo relationship between the two, even if, in contrast to this case, the structure under which the benefit is provided does not unequivocally demonstrate a quid pro quo relationship. For example, the courts have consistently disallowed contributions claimed for payments made to religious schools to the extent of the value received from the schools, even where the record showed that students could still be admitted to school even in the absence of a contribution. The courts have reasoned that, even if the contribution was not an explicit prerequisite to admission, "the contributions were induced in substantial part by the benefits which the parents anticipated from the enrollment of their children and should be considered tuition payments" (*Winters* v. *Commissioner*, 468 F.2d 778, 781 (2d Cir. 1972)). See also *Oppewal* v. *Commissioner*, 468 F.2d 1000, 1002 (1st Cir. 1972); *DeJong* v. *Commissioner*, 309 F.2d 373 (9th Cir. 1962); Rev. Rul. 83-104, 1983-2 C.B. 46. This type of externally ascertainable value can also be relevant when the structure of the payment and benefit does demonstrate a quid pro quo arrangement. For example, when an individual purchases a ticket to attend a benefit concert, the circumstances indicate that admission to the concert is the quid pro quo for the payment and would suggest at first blush that no part of the payment is a contribution. Where admission to the concert has some ascertainable market value, however, the taxpayer can demonstrate that the portion of his payment in excess of that value should be deductible as a contribution. See *United States* v. *American Bar Endowment*, 477 U.S. at 117. But reference to the value of a benefit in these contexts does not suggest that a charitable contribution deduction should be permitted when a payment is clearly made in exchange for a specific benefit, just because the value of the return benefit cannot be ascertained outside the context of the particular transaction.

Thus, the courts of appeals have recognized that the services received by petitioners in exchange for their payments had a "value" to them for purposes of the Section 170 inquiry; that is just another way of saying that the services were provided as part of a quid pro quo arrangement. As the Fourth Circuit explained, "the value which the taxpayer *expects* to receive, whether religious or secular, can be measured when she must pay a fixed fee in order to receive it. * * * [Therefore,] in the peculiar circumstances before us it is the *structure* of the Church's fixed donation plan, and not any post hoc characterization of the service rendered, that should determine whether the taxpayer is paying for a service of value to her or making a 'charitable contribution.' " *Miller*, 829 F.2d at 504 (emphasis in original). The Ninth Circuit below listed numerous attributes of the structure set up by the Church to market its

services, remarking that they "all underscore that the payment matched, with some precision, the benefits to be received" (Pet. App. 10a). The court further found that "[t]he value of the quid pro quo received by the taxpayers was easy for the Tax Court to determine, simply by looking at the amount of money they were willing to pay for it in a market setting," and the court noted that the fact "[t]hat the benefit may have had value only to religious adherents is not significant, given its measurable attributes" (*ibid.*). The First Circuit noted that "the Church of Scientology itself established and advertised the monetary prices ('fixed donations') for the services at issue" (87-963 Pet. App. 8a). The Tenth Circuit stated that "[a] benefit does not have to be economic to bar the deduction" (*Christiansen,* 843 F.2d at 420); "examination of the structure of these payments clearly reveals that they were made on a quid pro quo basis for services" (*id.* at 421). The court added that "there is no problem in determining the value of the services since the value has been set by the Church and is not contested by the taxpayers" (*ibid.*).[15]

[15] The court of appeals in *Staples* stated that "[s]piritual gain to an individual cannot be valued by any measure known in the secular realm" (821 F.2d at 1327), but that is not an objection to the decisions below because it is not "spiritual gain" to which the courts have attached a value. The quid pro quo for the payments here was the auditing and training courses provided by the Church in exchange, not the "spiritual gain" that may have accrued to petitioners as a result of receiving the auditing and training. These services have an ascertainable value to those who purchase them, reflected by the purchase price, in the same way that a concert ticket does. The price of the concert ticket reflects the value to the purchaser of the quid pro quo—admission to the concert; the price does not value the ultimate benefit to the purchaser, *i.e.*, his enjoyment of the concert. That ultimate benefit will vary from individual to individual and it cannot reasonably be valued, but that does not alter the fact that the payment for the concert ticket is part of a quid pro quo arrangement for admission to the concert. Similarly here, the quid pro quo inquiry focuses on what the individual is willing to pay in exchange for the advertised services; that inquiry does not entail any valuation of "spiritual gain."

Each of these formulations amounts to the same conclusion—that the record here unequivocally demonstrates that payments made to the Church of Scientology were not contributions, but rather were made to receive the specific quid pro quo of auditing and training. As Judge Newman succinctly stated, the issue whether these payments were part of a quid pro quo arrangement "is not even close. Auditing sessions are advertised, priced, and marketed by the seller and bought by the customer as specific benefits for the purchaser, and the Tax Court could hardly have found otherwise" (*Foley,* 844 F.2d at 98-99 (Newman, J., dissenting)).[16]

[16] The court of appeals in *Staples* suggested that the stipulations of fact here could not be reconciled with a holding that petitioners made payments in exchange for the benefit of auditing and training. The court stated that the stipulations "foreclose any reliance on the Church of Scientology's fixed donations as representing the value of its essentially religious practices" because the stipulations show that "the fixed donations are not market prices set to reap the profits of a commercial moneymaking venture," but rather a "bona fide church['s] * * * mechanism for raising funds from its members" (821 F.2d at 1327-1328). See also *id.* at 1325; *Neher*, slip op. 5, 16. It is clear that the court of appeals in *Staples* erroneously "exaggerated" the effect of the government's stipulations (see *Miller,* 829 F.2d at 504). The government stipulated that it would not contest in these cases that the Church of Scientology was a tax-exempt church (see Pet. App. 31a-32a). That stipulation removed what might otherwise have been raised as an independent ground for disallowing the deductions—the argument that the recipients of petitioners' payments were not eligible donees under Section 170(c)(2), an issue that was at the time being litigated for the "mother" Church in *Church of Scientology* v. *Commissioner, supra.* But that stipulation does not foreclose the courts from finding that the Church's programs at issue, even if they were religious, were provided on a quid pro quo basis for specified prices—

2. *Disallowance of Petitioners' Claimed Deductions Does Not Represent a Departure from any Established Administrative Practice*

Petitioners' primary contention is that, regardless of the plain import of the language of Section 170, "seventy years of consistent IRS interpretations" (Br. 10) have recognized that payments made in exchange for religious benefits are deductible (Br. 10-32). To support this contention, petitioners refer to a few IRS rulings (see Pet. Br. 10-11, 25) and to the fund-raising practices of other religious organizations (see *id.* at 18-27), which assertedly have been recognized by the IRS as yielding deductible contributions and also are claimed to be "indistinguishable" (*id.* at 14) from those at issue in this case. See also *Neher,* slip op. 18-20; *Staples,* 821 F.2d at 1326. This contention is mistaken on both counts. Neither IRS rulings nor the practices of other religions support the proposition that there has ever been an administrative construction of Section 170 that permits a taxpayer to take a charitable deduction for payments made to obtain commensurate religious benefits in return.

a. At the outset, the IRS's treatment of payments made to religious schools (see note 14, *supra*) belies the assertion that it invariably treats as a deductible contribution a payment to a religious organization for a religious benefit. The IRS has consistently taken the position that a payment to a religious school is not a "contribution or gift" when it is primarily designed to defray the costs of educating the taxpayer's child, and the courts have consist-

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a fact that is clearly established by the record—and therefore that the payments made by petitioners were not "contributions," but rather were made for the purpose of receiving auditing and training in exchange. A stipulation that a university is a tax-exempt institution under Section 501(c)(3) does not mean that tuition payments are deductible from gross income under Section 170.

ently sustained that position. See generally Rev. Rul. 83-104, 1983-2 C.B. 46. The payments have been held not to be contributions because "the parent taxpayers both anticipated and received substantial benefits from their payments" (*Winters* v. *Commissioner,* 468 F.2d 778, 781 (2d Cir. 1972)).[17] The close connection between the payment to the school and the rendition of services has been deemed inconsistent with deductibility even though a significant element of the benefit received was a religious education. See, *e.g., DeJong* v. *Commissioner,* 309 F.2d 373, 374 (9th Cir. 1962) (noting that the school was "God-centered" and taught Christian religion and doctrines "as a part of [its] regular curriculum"). As the First Circuit below noted (87-963 Pet. App. 8a), the outcome of the school cases has not rested on a finding that the "return benefits" received by the taxpayers were exlusively or even predominantly secular; the courts made no effort to determine what aspects of the education were "strictly religious." Similarly, we are advised by the IRS that it would not allow a deduction for payments made in exchange for a strictly religious educational benefit, such as tuition to a divinity school or seminary (although to our knowledge this precise issue has never been the subject of litigation or a revenue ruling).

Even apart from the religious school cases, there is little basis for petitioners' assertion that the IRS has administered Section 170 to provide a special exception for payments made in exchange for religious benefits. The ruling that gives rise to petitioners' claim of "seven decades of consistent IRS interpretations" (Pet. Br. 11) is A.R.M. 2,

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[17] See also *Oppewal* v. *Commissioner,* 468 F.2d 1000 (1st Cir. 1972); *DeJong* v. *Commissioner,* 309 F.2d 373 (9th Cir. 1962); *Haak* v. *United States,* 451 F. Supp. 1087 (W.D. Mich. 1978); *McLaughlin* v. *Commissioner,* 51 T.C. 233 (1968).

1 C.B. 150 (1919), which concluded that pew rents, church dues, and basket collections all "ordinarily and customarily" fall within the definition of "contribution" for purposes of the charitable deduction provisions. The explanation in the ruling is terse and fairly cryptic. The ruling stated that "[i]t is believed that the real intent is to contribute and not to hire a seat or a pew for personal accommodation." The ruling also noted that "in practice the so-called 'personal accommodation' [pew rents] may afford is conjectural"; "basket contributors sometimes receive the same accommodation informally." *Ibid.* That ruling was reaffirmed in Rev. Rul. 70-47, 1970-1 C.B. 49, without substantial elaboration. Treasury stated there that "[p]ew rents, building fund assessments, and periodic dues paid to a church * * * are all methods of making contributions to the church."

A subsequent ruling in a related context added some further explanation for this treatment of payments of this type to a church. In Rev. Rul. 77-160, 1977-1 C.B. 351, Treasury indicated that the same standards applicable to membership dues in secular organizations (see Rev. Rul. 68-432, 1968-2 C.B. 104) apply to church dues. The ruling then observed that church dues generally "confer no significant rights on the individual members, and are paid for the purpose of supporting the congregation and furthering its religious activities," whereas any personal benefits that a person may receive by virtue of church membership would best be described as "incidental" (Rev. Rul. 77-160, 1977-1 C.B. 351, 352).

The infrequency and brevity of these rulings perhaps leave something to be desired for purposes of articulating a complete analytical framework, but it is clear enough that the rulings do not reflect the establishment of a special exception under Section 170 for payments made to religious organizations to obtain religious benefits. In-

stead, the rulings attempt to apply on a case-by-case basis the basic inquiry applicable to all payments sought to be deducted under Section 170—whether the payment is made as part of a quid pro quo arrangement to secure a particular benefit. The premise of the 1919 ruling is not that religious benefits are special; it is the more factbound conclusion that church dues, pew rents, and basket collections are all designed as contributions for the general support of the church and that any privileges that the donor receives are incidental to that end and disproportionate to the size of the contribution. Treasury concluded, not unreasonably, that the "real intent" of such payments "is to contribute and not to hire a seat or a pew for personal accommodation" (A.R.M. 2, 1 C.B. 150), *i.e.*, the payments are not designed to obtain a quid pro quo return benefit.

It is not fairly possible to reach a similar conclusion on the record in this case. The Tax Court found, and the courts below agreed, that petitioners' payments were "not voluntary transfers," but "were made with the expectation of receiving a commensurate benefit in return" (Pet. App. 43a). Thus, the Ninth Circuit below specifically found that "[t]he Tax Court had sufficient evidence to distinguish [petitioners'] fixed donations from deductible payments to religious organizations in which the primary motivation is presumed to be charitable" (*id.* at 11a). In short, denial of the deductions claimed by petitioners here does not mark a "dramatic reversal" (Pet. Br. 28) of the IRS's prior positions. To the contrary, the basic approach here is not significantly different from that in the 1919 ruling. The difference is that the unusual facts in these cases do demonstrate that the payments were made primarily for "personal accommodation," and therefore they should not be deductible under Section 170. As the Fourth Circuit explained in *Miller,* the fact that payments to a church or

other non-profit organization "may be ordinarily deductible * * * because the benefits [the taxpayer] receives are 'incidental' to the benefits which flow to other members of her church or to the general public" does not mean that payments to a church are always deductible; "even payments to a church for 'religious services' can be structured as here so that their benefit is a quid pro quo—a direct and commensurate benefit—which the member is purchasing" (829 F.2d at 505).

b. There is similarly no merit to petitioners' assertion (Br. 14-29) that the payments in this case are indistinguishable from fund-raising techniques of many other religions that allegedly are recognized as yielding tax-deductible contributions. In support of this contention, petitioners describe a litany of fund-raising practices in different religions (Br. 18-25), most of which have not been passed upon by the IRS. These practices are diverse; some seem clearly to yield deductible contributions, some may be "close to the line" (*Foley,* 844 F.2d at 98 (Newman, J., dissenting)), and some may not yield deductible contributions. Their respective tax consequences would depend on the facts surronding the payments that would have to be developed in an appropriate setting. What these diverse practices do have in common is that they all are different from the inflexible quid pro quo arrangement present in these cases, and none of them provides any reason to doubt the correctness of the decisions below.

First, there is no reason to accept petitioners' assertion that the IRS has approved a tax deduction for all of the practices enumerated by petitioners, even if we assume that they in fact operate as petitioners describe. For example, petitioners contend (Br. 25) that their payments for auditing and training should be analogized to a practice in Jewish Reform temples of using special fees to raise funds, such as a fee to participate in a Passover meal. The source

that petitioners cite describes this fee as a "nominal" one "to help contain the costs," not to raise funds. National Association of Temple Administrators, *Temple Management Manual* Ch. 4, at 11 (J. Feldman, H. Fruhauf & M. Schoen eds. 1984). There is no reason to assume that taxpayers generally would even claim a deduction for a fee to help defray costs of providing them with a meal, and certainly no reason to believe that the IRS would agree that they were entitled to such a deduction. Indeed, the other example given in the Temple Management Manual of such a special fee is a charge for the use of facilities in connection with the celebration of a Bas Mitzvah. *Ibid.* The IRS has successfully challenged an attempt to take a deduction for such a payment. *Feistman* v. *Commissioner,* 30 T.C.M. (CCH) 590 (1971).

More generally, even without making a detailed factual inquiry, it is apparent that the practices described by petitioners differ in significant respects from the highly commercialized provision of individual benefits present in these cases. "Mass stipends" (see Pet. Br. 18-20) have been regarded by the IRS as conferring only an incidental benefit upon the donee. See Rev. Rul. 71-580, 1971-2 C.B. 235, 236. This conclusion is a reasonable one given that the masses are said for the benefit of all church members and that the masses would be said anyway even without the payment of the stipend (see Rev. Rul. 78-366, 1978-2 C.B. 241); in that situation, the application of the mass in the name of a particular person may be more analogous to a plaque honoring a donor, which is generally regarded as an incidental benefit, than to the provision of personal auditing and training services involved in this case. Mormon "tithing" (see Pet. Br. 21-22) plainly does not involve a quid pro quo arrangement in which "it is understood that the taxpayer's money will not pass to the charitable organization unless the taxpayer receives a specific benefit in re-

turn" (Pet. App. 8a). "Temple recommends" are issued only to "worthy" members. There are several tenets of the Mormon faith, of which tithing is only one, that must be observed in order to meet the "worthiness" standard. Therefore, unlike the payments here, tithing is not a "ticket" to a "temple recommend"; a Mormon who tithed but, for example, did not abstain from alcohol would not be entitled to a "temple recommend." See Church of Jesus Christ of Latter-Day Saints, *General Handbook of Instruction,* at 6-1 (1985).

By the same token, the Jewish fund-raising practices described by petitioners differ significantly from those of the Church of Scientology. Membership dues (Pet. Br. 22-23), like those paid to secular organizations, often do not confer anything more than incidental benefits on the members. And such dues generally are not fixed like the payments in this case; rather, petitioners' source indicates that they are paid either on a "self-evaluation" basis or on a sliding scale according to financial status. See *Temple Management Manual, supra,* Ch. 4 at 9. While there are variations among synagogues, there is no basis for assuming that those that do sell High Holy Day tickets to raise funds (Pet. 23) do so in a manner analogous to the activities at issue here. Rather, synagogues frequently make arrangements for people of limited means to attend services without purchasing a ticket; there is no edict declaring that "[p]rice cuts are forbidden under any guise" (Pet. App. 39a n.6). Nor is there any reason to believe that one who paid money to obtain a High Holy Day ticket would expect a refund if he did not attend services. In sum, the fund-raising practices of other religions cited by petitioners are not suffused with the money-making intent and rigid linkage between payment and the provision of individualized services that is the hallmark of the Church of Scientology's system of "fixed donations" for auditing and

training. Each type of payment must be judged on its own facts to determine whether it is a genuine contribution or part of a quid pro quo arrangement. The existence of the cited practices of other religions therefore provides no basis for questioning the correctness of the decision below.

II. The Denial Of Petitioners' Claimed Charitable Deductions Because Their Payments To The Church Were Not "Contributions Or Gifts" Does Not Violate The First Amendment

Petitioners argue that the denial of deductions for their payments to the Church violates the First Amendment. They argue that the denial violates the Establishment Clause by creating a "denominational preference" (Pet. Br. 46-48) and because an inquiry into whether a payment is made in exchange for a religious benefit necessarily creates an unconstitutional "entanglement" with religion (*id.* at 43-46). These arguments were correctly rejected by the courts below (Pet. App. 11a-18a; 87-963 Pet. App. 9a-24a) and the other courts of appeals that have considered them (see *Christiansen,* 843 F.2d at 421; *Miller,* 829 F.2d at 505-506).

A. Petitioners argue that Section 170, as interpreted by the courts below, establishes an unconstitutional denominational preference, apparently because it does not provide a tax deduction for the Church of Scientology's chosen method of fund-raising, while it does permit tax deductions for payments made in the context of fund-raising by other religions. This argument is entirely without merit. Section 170 establishes neutral, secular criteria for determining when a payment to a tax-exempt organization is deductible, and it does not create a denominational preference.

It is well established that a statute does not necessarily violate the First Amendment merely because its application happens to be more advantageous for one religion

than for another. Thus, in *Bob Jones University* v. *United States, supra,* it was clear that the denial of a tax deduction to racially discriminatory religious schools did not violate the First Amendment despite the schools' assertion that Section 170, as interpreted by the Court, "preferr[ed] religions whose tenets do not require racial discrimination over those which believe racial intermixing is forbidden" (461 U.S. at 604 n.30). The court explained that when the government policy is founded on a " 'neutral, secular basis,' " there is no Establishment Clause violation merely because that secular basis draws distinctions among religions (*ibid.*, quoting *Gillette* v. *United States,* 401 U.S. 437, 452 (1971)).

These principles foreclose petitioners' contention. Section 170 operates on a neutral, secular basis. It applies the same criteria to all tax-exempt organizations, including all religious ones—namely, that payments made to them will be deductible if they are contributions, but not if they are part of a quid pro quo arrangement in exchange for specific benefits. The fact that the Church of Scientology chooses to raise its funds by means of such a quid pro quo arrangement, even if the choice is a matter of religious doctrine, does not convert the neutral statute into one that creates a denominational preference. As the Court has stated on several occasions, a statute does not violate the Establishment Clause merely because it "happens to coincide or harmonize with the tenets of some or all religions" (*McGowan* v. *Maryland,* 366 U.S. 420, 442 (1961)). See also *Bob Jones University* v. *United States,* 461 U.S. at 604 n.30; *Harris* v. *McRae,* 448 U.S. 297, 319-320 (1980).

Applying these principles, the courts of appeals have uniformly held that Section 170 does not create a denominational preference. The First Circuit below stated that "the 'contribution or gift' requirement is a secular criterion encouraging gifts to all religious and nonreligious

charitable organizations and communicating no government preference for any particular charitable organization" (87-963 Pet. App. 10a). Similarly, the Ninth Circuit below found that "[t]he rules for charitable deduction are neutral in design and purpose" (Pet. App. 18a). See also *Miller,* 829 F.2d at 505. The denial of petitioners' claimed deductions was grounded on that neutral statutory requirement, and it raises no inference of any unconstitutional discrimination among religions.[18]

B. Petitioners state that disallowance of their deductions "places a heavy burden on the central practice of Scientology" (Pet. Br. 47 (footnote omitted)). To the extent this statement is intended to raise an argument that denial of the claimed deductions violates the Free Exercise Clause, that argument was correctly rejected by the courts of appeals below. Petitioners' argument appears to be that the Church of Scientology's religious tenet of the "Doctrine of Exchange" requires it to offer its services on a quid pro quo basis; thus, under Section 170, Scientologists are required to choose between forgoing a tax deduction or abandoning this tenet of their faith. To the extent this is a burden on the practice of petitioners' faith, there can be

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[18] Petitioners rely almost exclusively on *Larson* v. *Valente,* 456 U.S. 228 (1982), but that case is clearly inapposite. *Larson* recognized the vitality of the principles discussed above, notably the principle that neutral, secular criteria are not unconstitutional simply because they affect different religions in different ways. See *id.* at 246-247 n.23. The Court found those principles inapplicable in *Larson* only because that case did not involve "a facially neutral statute, the provisions of which happen to have a 'disparate impact' upon different religious organizations." Instead, *Larson* involved a statute that made "explicit and deliberate distinctions between different religious organizations." *Ibid.* Because the present cases do involve a facially neutral statute that makes no attempt to distinguish among religions, *Larson* plainly has no application here. See Pet. App. 18a; 87-963 Pet. App. 10a; *Miller,* 829 F.2d at 505.

little doubt under the decisions of this Court that it is not an unconstitutional burden.

In *United States* v. *Lee,* 455 U.S. 252 (1982), this Court sustained the imposition of social security taxes upon members of the Old Order Amish whose faith forbids paying such taxes or receiving social security benefits. The Court held that the burden placed upon the free exercise of the taxpayers' beliefs was outweighed by the "broad public interest in maintaining a sound tax system" (*id.* at 260). The Court emphasized that the diverse and cosmopolitan nature of our society makes it difficult to accommodate all religious beliefs in the tax laws (*id.* at 259-260). Petitioners' Free Exercise Clause claim is considerably weaker than that of the taxpayer in *Lee.* Unlike the situation in that case, the neutral application of the tax laws here does not force petitioners to violate any tenet of their religion, it requires them only to forgo a tax deduction. While that may be some burden on the exercise of their religion, it is clearly outweighed by the strong policies in favor of evenhanded administration of the tax laws that counsel against requiring the Internal Revenue Code to confer a special exception upon the Church because of its Doctrine of Exchange. Compare *Bob Jones University* v. *United States,* 461 U.S. at 603-604 (burden of denying tax exemption to racially discriminatory schools outweighed by government interest in eradicating discrimination from education). As the Ninth Circuit below stated, "the soundness of the tax system depends on government's ability to apply the tax law in a uniform and evenhanded fashion, and the exemption of one presages the exemption of a great many others" (Pet. App. 17a). Thus, the courts of appeals have correctly held that the First Amendment does not require that the IRS allow a tax deduction for a payment that is part of a quid pro quo arrangement. See *id.* at 15a-17a; 87-963 Pet. App. 23a-24a; *Miller,* 829 F.2d at 506.

C. Petitioners also argue (Br. 43-46) that the inquiry into whether a payment to a religious organization is a contribution or a quid pro quo necessarily creates unconstitutional entanglement with the religion. Petitioners' objection apparently rests in large part on the view that the IRS must determine the economic value of religious benefits in order to determine whether they are provided as a quid pro quo for a payment. That is incorrect (see pages 33-37, *supra*). The quid pro quo determination is made on the basis of an inquiry into the circumstances surrounding the payment to assess whether it is a genuine contribution or equivalent to a purchase of a commensurate return benefit. While that inquiry may entail some administrative contact with the religious entity, it does not impermissibly entangle the state in matters of religious dogma. Indeed, as the First Circuit below noted (87-963 Pet. App. 14a), the test proposed by petitioners poses a much greater risk of entanglement, since the IRS would be put in the position of determining which benefits are "strictly religious" (*Staples,* 821 F.2d at 1327) and which are secular. See also *Miller,* 829 F.2d at 506.

Moreover, this is not a case where the government has undertaken a program to aid a religious institution, which is the typical sort of case that raises Establishment Clause concerns about entanglement. Compare, *e.g., Lemon* v. *Kurtzman,* 403 U.S. 602 (1971). Rather, the limited administrative contact here is necessary for the law enforcement purpose of assuring evenhanded administration of the tax system; just like enforcement of building codes and zoning regulations, this type of administrative contact does not ordinarily raise First Amendment concerns. See *Tony & Susan Alamo Foundation* v. *Secretary of Labor,* 471 U.S. 290, 305-306 (1985). In essence, the quid pro quo inquiry does not differ whether the recipient of the payments is a religious organization or one of the other

types of charitable organizations specified in Section 170(c)(2) of the Code—regardless of whether the particular benefits received in exchange for the payments are religious in nature. Accordingly, that quid pro quo inquiry does not necessitate any unconstitutional entanglement with religion.

CONCLUSION

The judgments of the courts of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

The First Amendment to the Constitution provides in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *."

Section 170 of the Internal Revenue Code (26 U.S.C.) provides in pertinent part:

Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

* * * * *

(c) Charitable contribution defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or edu-

cational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). * * *

* * * * *

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Nos. 87-963, 87-1616

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ROBERT L. HERNANDEZ,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CORRECTED COPY

KATHARINE JEAN GRAHAM, RICHARD M. HERMANN, AND DAVID FORBES MAYNARD,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writs of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

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REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

I. PARTICIPATION IN RELIGIOUS OBSERVANCES IN RETURN FOR FIXED DONATIONS TO CHURCHES DOES NOT CONSTITUTE THE KIND OF FINANCIAL OR ECONOMIC BENEFIT TO THE PAYOR THAT DISALLOWS OR REDUCES CHARITABLE DEDUCTIONS UNDER § 170.

The stipulations of facts in these cases established and the Tax Court found that the payments at issue here are fixed donations made by individuals to a tax-exempt church to participate in the religious observances of their faith. ¶¶ 4, 11, 15, 16, 23-26, 36, 39, 40, 42, 52, 53; JA 29-38; *Graham v. Commissioner*, 83 T.C. 575, 576, 577 (1984); Pet. App. 32a, 38a.[1] For nearly 70 years, the Internal Revenue Service (hereinafter "IRS") has allowed deductions as charitable contributions under § 170 of the Internal Revenue Code for such payments.

Here, for the first time, the Commissioner would deny deductions for contributions made by individuals solely to participate in religious sacraments. The government's brief reflects the convolutions necessary to its argument that this case is both unique and routine. The government rewrites seven decades of consistent IRS administrative practice, claiming that rulings involving a host of secular goods and services are controlling in a case involving a purely religious benefit and obfuscating IRS rulings that allow without question deductions under § 170 for payments made to churches to participate in religious services.

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[1] References in this brief are as follows: To Petitioners' Opening Brief, Pet. Br. ——; to Petitioners' Supplemental Brief, Supp. Br. ——; to the Brief for the Respondent, Gov. Br. ——; to the Brief of the American Jewish Congress and the National Jewish Community Relations Advisory Council as *Amici Curiae* in support of the Petitioners, AJC Br. ——; to the Appendix to the Petition for Certiorari in No. 87-963, Pet. App. ——a; to the Joint Appendix, JA ——.

Nowhere does the government cite a case or IRS ruling, apart from the instant litigation, where payments made by an individual to a church or synagogue to participate in religious services have been denied deduction. Nor does the government provide a principle or legal standard to which churches and synagogues and their members must hew. Instead, the government adduces a multitude of "facts" never before considered relevant, including the individual setting of the religious service, the church's methods of proselytizing, whether the religious service would have been provided without the payment, what category of persons other than the payor might be provided free services by the religion, what conduct in addition to payment is required under the religion's tenets, etc.

If the government prevails, the IRS undoubtedly will resolve such "factbound" determinations, as it has here, by adducing "facts" on behalf of those religions it favors and against those it disfavors. Such arbitrary and inconsistent treatment of worshipers is not sanctioned by the tax code and has no place in its administration.

A. The Government's Brief Rewrites History.

Petitioners' opening brief details the consistent line of IRS administrative pronouncements allowing deductions under § 170 and its predecessors for fixed payments by individuals to participate in the religious observances of their faiths. This practice of allowing such deductions accords with the language, legislative history and policies of § 170. Pet. Br. at 10-13, 32-37. *See also* Supp. Br. at 4-5; AJC Br. at 8-16. Although the government insists repeatedly that the determination of deductibility of fixed payments to churches is, and always has been, "factbound," the government cites no precedent whatsoever that disallows a deduction under § 170 for payments made solely to participate in religious services.

Each of the appellate decisions in this litigation, including those the government won, has acknowledged that a finding for the government requires a substantial

departure from prior administrative practice, one calling into question the "continuing validity" of prior rulings involving a wide variety of payments to churches and synagogues. *Hernandez v. Commissioner*, 819 F.2d 1212, 1227 (1st Cir. 1987); Pet. App. 27a. *See also* Pet. Br. 4-5, 13-14 n.11 (quoting cases). The appellate courts that have held for the taxpayers below have indicated that this case not only represents a major departure from prior administrative practice, but also is one that "has ominous implications for all religious institutions." *See, e.g., Neher v. Commissioner*, 852 F.2d 848, 857 (6th Cir. 1988) (quoting *Christiansen v. Commissioner*, 843 F.2d 418, 421 (10th Cir. 1988) (Seymour, J., dissenting)); Pet. Br. at 12-14.

The government, however, rewrites the administrative history of § 170, endeavoring to portray this case as nothing more than a routine application of well-settled principles. Gov. Br. at 38-43. In disavowing 70 years of consistent administrative practice, the government relies entirely upon cases and rulings involving benefits other than participation in religious observances, characterizes prior rulings that support the petitioners' position as "terse" and "fairly cryptic," *id.* at 40, and claims that their "infrequency and brevity . . . perhaps leave something to be desired for purposes of articulating a complete analytical framework." *Id.*[2]

The government's strained effort to deny the very existence of the long-standing IRS distinction between payments for participation in religious services and payments for financial or economic benefits is apparent in its assertion that deductibility of membership dues to a church involves "the same standards applicable to membership dues in secular organizations." Gov. Br. at 40.

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[2] The government ignores the ultimate conclusion of the 1919 IRS ruling, allowing deductions for a wide variety of payments for participation in religious services because "[i]n substance, it is believed that these are simply methods of contributing, although in form they may vary." A.R.M. 2, 1 C.B. 150 (1919) (reproduced at Pet. App. 57a).

Comparing the two key revenue rulings involving the treatment of membership dues to secular charities and religious organizations reveals the contrary. Revenue Ruling 68-432, 1968-2 C.B. 104, describes the circumstances under which membership dues to secular charities will be permitted or denied deduction in whole or in part. The ruling concludes that "payment of membership dues to a charitable organization is deductible as a charitable contribution *to the extent such payment exceeds the monetary value* of the benefits and privileges available by reason of such payment." 1968-2 C.B. 105 (emphasis added).[3] *See also* Rev. Rul. 67-246, 1967-2 C.B. 104; *United States v. American Bar Endowment*, 477 U.S. 105, 117-18 (1986).

In contrast, Rev. Rul. 70-47, 1970-1 C.B. 49, states unequivocally that "periodic dues paid to a church . . . are deductible as charitable contributions" under § 170 of the Code. There is no suggestion that participation in religious services ever entails the kind of benefit of monetary value that reduces or disallows charitable deductions.[4] As the Second Circuit stated, "the *quo* of religious experience can never be considered the equivalent of the *quid* of a money payment." *Foley v. Commissioner*, 844 F.2d 94, 97 (2d Cir. 1988), *cert. pending*, (No. 88-102). *See also Staples v. Commissioner*, 821 F.2d 1324, 1327 (8th Cir. 1987) ("Spiritual gain to an individual church member cannot be valued by any measure known in the secular realm."), *cert. pending*, (No. 87-1382).

The government also looks for support in cases involving old-age homes, sewing machines, and insurance, and principally in IRS disallowances, at least in part, of deductions under § 170 for payments for education at religious schools. Gov. Br. at 19-21, 38-39. This Court, however, has recognized the distinction in the tax law between educational activities and religious services.[5] *See Bob Jones Univ. v. United States*, 416 U.S. 574, 604 n.29 (1983) ("We deal here only with religious *schools*

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[3] The IRS's General Counsel has indicated that the "primary objective" of this Ruling was "making it entirely clear that an appropriate portion" of membership dues *are deductible* to the extent the amount of such payment exceeds "the total *monetary value* of all the potential return benefits thereby obtainable." G.C.M. 33797, Apr. 15, 1968 (emphasis added). Notwithstanding its claim that the same standards apply, the government clearly departs here from the principles of Rev. Rul. 68-432. Recognizing that a determination of "the monetary value" of the benefit from religious services would be both impracticable and unconstitutional, the government insists that the amount of payment itself determines the monetary value of the religious services provided in return. Gov. Br. at 34 n.14 & 35-36.

[4] The government also relies upon Rev. Rul. 77-160, 1977-1 C.B. 351 (described as "a subsequent ruling in a related context") for its claim that deductibility of membership dues of churches and secular charities is determined by the "same standard." Gov. Br. at 40. That ruling, however, addresses the issue whether payment by a private foundation of a "disqualified person's" church membership dues constitutes an act of "self-dealing" under § 4941(d)(1)(E) of the Internal Revenue Code. The ruling held that the foundation's payment of the membership dues conferred a "*direct economic benefit*" by relieving the person from a *financial* obligation he otherwise would have incurred himself. Rev. Rul. 77-160, 1977-1 C.B. 351 (emphasis added).

General Counsel's Memorandum 36784, July 9, 1976, which analyzes this ruling in detail, notes that the membership dues at issue entitled the member to tickets for admission to "special worship services" on "certain days of special religious significance," adding "[a]s a practical matter . . . members and visitors obtain tickets under the congregation's prescribed procedures [that require payment of an 'established fee'] and display such tickets upon entering the house of worship on the days in question." The G.C.M. distinguishes explicitly the non-economic benefit of attending worship services from the *financial* benefit of a third party's payment of dues and indicates that the payments for membership dues would be deductible under § 170 if paid by the individual himself, thereby contradicting the point for which the ruling is advanced by the government.

[5] As petitioners' opening brief makes clear, disallowance of charitable deductions for tuition at religious schools is necessary to preclude deductions for otherwise explicitly nondeductible personal education expenditures, a problem that simply does not occur with respect to deductions for a church's provision of religious services. Pet. Br. at 32-37.

not with churches or other purely religious institutions . . . .") (emphasis in original). The IRS also is acutely aware of the distinction. *See, e.g.*, G.C.M. 35986, Sept. 13, 1974 (distinguishing religious education from religious services, explaining that religious schooling is significantly different than "an inherently religious program").

Ironically, three weeks after the government filed its brief denying the existence under § 170 of any IRS administrative practice distinguishing religious education from religious observances, IRS Assistant Commissioner Robert I. Brauer released a "question and answer guidance package" concerning deductibility under § 170 of various payments to tax-exempt charitable organizations. Commissioner Brauer indicated that this informal guidance "represents the Service's cumulative position." Question and Answer Number 10 addresses payments such as those at issue here. It refutes explicitly the statements and analysis of the government's brief and fully supports petitioners' position:

> Q10: May a taxpayer deduct payments that are solicited by religious organizations for religious and related services?
>
> A10: Deductibility depends upon the type of services provided by the religious organization. For example, parochial school tuition payments are not deductible as charitable contributions because the payments are made with the expectation of a *definite economic benefit. In contrast to tuition payments, religious observances generally are not regarded as yielding private benefits when attending the observances. The primary beneficiaries are viewed as being the general public and members of the faith. Thus, payments for saying masses, pew rents, tithes, and* ***other payments involving fixed donations for similar religious services, are fully deductible contributions.***

IRS Official Explains New Examination-Education Program on Charitable Contributions To Tax-Exempt Organizations, B.N.A. Daily Tax Report for Executives, J-1, J-3 (Sept. 26, 1988) (emphasis added).

This recent reaffirmation by the IRS of the deductibility of payments to churches to participate in religious services, first announced in A.R.M. 2, 1 C.B. 150 (1919) and reaffirmed in Rev. Rul. 70-47, 1970-1 C.B. 49, belies the government's extraordinary efforts to reinterpret seven decades of consistent IRS administrative practice. It proves false the government's claim that "[t]here is no administrative practice recognizing that payments made in exchange for religious benefits are tax deductible." Gov. Br. at 16. To the contrary, the IRS always has allowed deductions under § 170 for fixed donations made by individuals to their churches and synagogues to participate in the religious services of their faith. *See Neher*, 852 F.2d at 856-57; *Foley*, 844 F.2d at 96; *Staples*, 821 F.2d at 1326. Only Congress may reverse such a long-standing interpretation of the tax laws.

Further, the government quotes but then ignores the legislative history of § 170, and avoids altogether similar statements in IRS regulations, rulings and other administrative pronouncements that charitable deductions under § 170 are disallowed only when the donor receives a *financial* or *economic* benefit commensurate with the amount contributed. Gov. Br. at 19. *See* Pet. Br. at 32-33; AJC Br. at 8-12. The government's proposed reversal of seven decades of consistent administrative practice has no grounding in the statute, in its legislative history, in IRS regulations or other rulings, in prior judicial precedents or in the policies of § 170 of the Code. It represents an effort by the IRS to obtain unfettered discretion to allow deductions for payments to those religious organizations it favors, while disallowing them to those it disfavors.

B. The "Factbound" Inquiry Proposed By The Government Is Not A Lega! Standard; It Is A License Granting Unfettered Discretion To The IRS.

1. *The Government Is Bound By Its Stipulations Below.*

Throughout its brief the government maintains that deductibility of payments to participate in religious ser-

vices is a "factbound" inquiry, one that depends on each case's "facts and circumstances." *See, e.g.*, Gov. Br. at 19, 20, 32, 41. The government then selectively recites "facts" both to argue for its claim that the fixed donations at issue here are not deductible and to try to distinguish related practices in other faiths. Many of these "facts" are adduced to diminish the force of the government stipulations below and thereby deflect this Court from the basic legal issue of this case and, at the same time, to induce prejudice against the Church of Scientology's fund-raising methods and religious practices.

First, the government stipulated that the Scientology organizations that received the payments at issue here are tax-exempt churches eligible to receive deductible contributions under § 170(c)(2). ¶¶ 52-53, JA 38. As the government's brief recognizes, "[a]ll of the organizations listed as eligible donees in Section 170(c)(2) are obliged to operate for 'charitable purposes' and to put the public interest above the private interest. . . ." Gov. Br. at 30. Therefore, the government's claims that this Church operates as a "commercial enterprise" predominately to "make money" or provide "private benefits" to its members are directly contradicted by its stipulations. *See Neher*, 852 F.2d at 850; *Staples*, 821 F.2d at 1326.

Second, the government agreed below both that Scientology is a religion, and that "[e]very Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology." ¶ 15, JA 31. The government also stipulated that "[n]o subject matter is taught, studied, or learned during an Auditing session . . . ." ¶ 23, JA 35. The Tax Court found the payments were made for religious services, 83 T.C. at 577, Pet. App. 38a. Uncontradicted testimony demonstrates that Scientologists believe that the spiritual benefits derived from their religious practices of auditing and training accrue not only to the individual but also to the public at large. JA 40-42, 48, 53, 60-61, 66-67, 70-71. Scientologists believe that the enhancement of civilization is linked to their spiritual goals and practices.

Foley, 844 F.2d at 96. Like adherents of other religions, the fixed donations of Scientologists provide them with the opportunity to travel the spiritual path of their faith, nothing more and nothing less.

2. *The "Quid Pro Quo" Label Does Not Determine Deductibility Under § 170.*

The government attempts to conceal the discretionary nature of its position by endless repetition of the phrase "*quid pro quo*." (This phrase appears 74 times in the government's brief.) As the history of § 170 makes clear, however, the charitable process is suffused with *quid pro quo*'s. Benefits virtually always flow from charitable contributions, including those to religious organizations. Churches and synagogues that require fixed payments from their members typically promise them a better life here on earth and, frequently, salvation. Treating participation in religious observances as the kind of benefit that requires disallowance of charitable deductions would frustrate Congress' intention to allow members of all faiths to provide financial support to their churches through tax-deductible payments.

The phrase "*quid pro quo*" is only the beginning of an inquiry into the deductibility of donations to charities, an inquiry that in the secular context concerns the nature and value of any benefits provided by the charity in return for the payment. The government here instead advances the *quid pro quo* phrase to end the inquiry under § 170, and rejects the standard investigation of the value of financial or economic benefits provided to donors by secular charities.[6]

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[6] The disallowance of all or a portion of claimed deductions to secular charities is typically grounded on the following two-part test: "First, the payment is deductible only if and to the extent it exceeds the market value of the benefit received. Second, the excess payment must be 'made with the intention of making a gift.'" *United States v. American Bar Endowment*, 477 U.S. at 117-18 (citing Rev. Rul. 67-246, 1967-2 C.B. 104, 105) (quoted in Pet. Br. at 38). The government, however, regards neither of these standard tests as applicable to the instant case, contrary to its

Nowhere, however, does the government offer a "line" —a legal principle—that would enable a church or synagogue and its members to know whether (or to what extent) their payments are deductible. Instead of following the IRS practice of seven decades—allowing deduction under § 170 for payments to churches to participate in religious observances without regard to the form of the payment or the nature or value of the religious service—the government simply claims the issue is "factbound" and advances an endless litany of "facts."

Yet at issue here is the question of deductibility under § 170 of payments, fixed in amount by the church, made by its members to a tax-exempt church for the sole purpose of enabling them to participate in the religious observances of their faith. None of the "facts" adduced by the government supports disallowance of deductions for these donations.

C. "Facts" Recited By The Government Provide No Support For Its Position.

The government does not deny that individuals commonly deduct under § 170 a wide variety of fixed payments to their churches and synagogues and have done so for decades without question by the IRS. Nor—with the exception of payments made for services routinely provided in the secular realm, such as for education or parties following religious ceremonies—does the government

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assertion that "the *quid pro quo* inquiry does not differ . . . regardless of whether the particular benefits received in exchange for the payments are religious in nature." Gov. Br. at 49-50. First, the government apparently agrees with petitioner that the donor's intent is irrelevant under § 170 where payments for religious services are involved. Pet. Br. at 38 n.53. The subjective intent of petitioner Hernandez has never been placed in issue. JA 145; Gov. Br. at 6. Second, the government maintains that valuation of benefits is not appropriate for participation in religious services. Gov. Br. at 34 n.14. Thus the crucial factual determination in all other contexts—the comparison of the monetary value of the benefit provided by the charity with the amount of the donor's payment, the relationship of the *quid* to the *quo*—would be inapplicable when payments for religious services are involved. *See* Pet. Br. at 37-40.

describe even one instance where such deductions have been challenged by the IRS. Apparently, no controversy over deductibility of such payments has previously occurred.

The government nevertheless now claims that fund-raising practices of different religions "have not been *passed upon* by the IRS," and remarks that some fund-raising practices "seem clearly to yield deductible contributions, some may be 'close to the line' . . . and some may not yield deductible contributions." Gov. Br. at 42 (emphasis added). A clearer threat to fund-raising practices of mainstream churches and synagogues is hard to imagine. Deductibility, according to the government, now would turn on "the facts surrounding the payments" as "developed in an appropriate setting," with the IRS enjoying its usual presumption of correctness. *Id.*[7]

The government nonetheless attempts to limit the scope of its position, reciting various facts in an effort to explain why members of this church have been singled out for disallowance of deductions. These facts fall into four categories: (1) the individual rather than congregational nature of the religious practices at issue here; (2) the use of "commercial" or "business" techniques in fund-raising and proselytizing; (3) the form or "structure" of the transactions; and (4) miscellaneous facts offered in an effort to distinguish the fund-raising practices of mainstream religions. None of these facts supports the denial of the deductions at issue here.

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[7] In a related context, this Court described the "facts and circumstances" inquiry whether a payment is a gift under § 102 of the Internal Revenue Code as "based ultimately on the application of the fact-finding tribunal's experience with the mainsprings of human conduct to the totality of the facts of each case." *Commissioner v. Duberstein*, 363 U.S. 278, 289 (1960). This seems to be what the government is urging here. The variety and *ad hoc* quality of results under such a "factbound" test is not appropriate in determining when an individual's payments to a church or synagogue will be deductible under § 170.

1. *Individual Versus Congregational Worship.*

The government's brief demonstrates unequivocally the IRS's intention to disallow deductions for payments for Scientology religious services because they are conducted individually rather than congregationally. It was settled below by stipulation that auditing is a ritualistic religious practice. ¶¶ 15, 16, 17; JA 31. Nevertheless, the government stresses repeatedly that auditing is conducted in an individual rather than a congregational setting, Gov. Br. at 3, 5, 16, 44, and describes "the provision of individualized services" as a "hallmark" of this church's practices. *Id.* at 44.

The government claims that the IRS has made a "fact-bound" determination that masses or other "similar religious observances" provide only "incidental" benefits to the individual and "spiritual benefit to all the members of that faith and to the general public," but that "it is not apparent that an auditing session for a particular individual was believed to yield any significant benefits to other members of the Church." *Id.* at 32 (quoting Rev. Rul. 71-580, 1971-2 C.B. 235, 236). The government ignores the uncontradicted testimony that Scientologists, like adherents of other faiths, believe that the general public as well as other Scientologists benefit from their religious practices. *See, e.g.*, JA at 40-42, 48, 53, 60-61, 66-67, 70-71. As the Sixth Circuit stated in *Neher*, the attempted distinction between individual and congregational worship is "without meaning." 852 F.2d at 857. *See also Staples*, 821 F.2d at 1326 ("The public benefit from religion remains and predominates regardless of whether church doctrines provide for traditional congregational worship or individual worship as in Scientology . . . ."); *Hernandez*, 819 F.2d at 1227 ("The IRS found significance in the fact that unlike collective worship services . . . [these religious] services are performed in private sessions . . . . [T]he collective or individualized nature of those services is irrelevant . . . ."); Pet. Br. at 15-17.

The government also frequently repeats that Scientologists receive personal benefits from their participation in this Church's worship services. Gov. Br. at 4, 14, 15, 23, 24, 31, 32, 41, 43. But many faiths hold that faithful observance and worship will provide personal benefits, commonly including peace of mind, ability to cope with stress, and even increased prosperity and health. The Mormons, for example, have advertised in *Reader's Digest* that their religious services offer prospects for greater individual security and self-reliance, more satisfying personal lives, good health, better marriages and better relationships with children. *Reader's Digest*, Apr. 1978 (8 pages between 48 & 49); June 1978 (8 pages between 188 & 189); Sept. 1978 (8 pages between 64 & 65); Dec. 1978 (8 pages between 64 & 65); July 1979 (8 pages between 16 & 17). Many other churches believe in doctrines such as "seed faith," "100-fold return," "the law of sowing and reaping," and the "law of reciprocity," all of which promise rewards for participation in the faith.[8] The fact that Scientology promises benefits to the everyday lives of its members does not distinguish it from other denominations.

Whether religious observances are conducted in individual settings or in the congregational fashion of most Western religions is irrelevant to the tax treatment of fixed donations made in return for participation in those services. Neither the Internal Revenue Code nor its policies remotely suggest that such a distinction should be drawn. Furthermore, such a distinction would advantage

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[8] *See, e.g.*, O. Roberts, *Seed Faith Scriptures* (1972); P. Cho, *Salvation, Health, Prosperity* (1987); R. Kendall, *Tithing: A Call to Serious Biblical Giving* (1982). Dean Kelley in *Why Churches Should Not Pay Taxes* 52 (1977) explains that religious belief and worship are a potent stabilizing influence in the lives of church members, and often produce substantial betterment in their psychological and financial situations: "[A]n effectively functioning religion helps its adherents to cope with their life-situations, to bounce back from difficulties with resilience and confidence restored. Often a by-product of religion's stabilizing effect is that its adherents rise in socio-economic scale and become 'haves' themselves."

or disadvantage individuals based upon the religious tenets of their denomination in contravention of the First Amendment.[9]

2. *This Church's Use Of "Commercial" Or "Business" Methods In Proselytizing Its Religion Is Irrelevant.*

The government argues repeatedly that the active promotion of Church worship services, coupled with the use of business terminology and methods, is evidence that auditing is a commercial product. Gov. Br. at 4, 5, 13, 14, 22, 24, 25, 27, 35. This argument is erroneous, given that the government has conceded that the Church of Scientology is a "religion" and a "church" within the meaning of § 170 and that the fixed donations at issue here were made to participate in a religious observance. *See* Pet. Br. at 26-27 & n.37. *See also Neher*, 852 F.2d at 850 (Tax Court finding that the Church "operates in a commercial manner in providing these religious services" is "irrelevant and not controlling"); *Staples*, 821 F.2d at 1325 ("The tax court . . . ignored the fair impact of the government's stipulations.").

The government's claim that aggressive promotion of religious services transforms them into a commercial product elevates semantics over substance. Many religions "promote" their faith, through advertisements, market research, door-to-door solicitations, and countless other means.[10] Contrary to the government's suggestions,

[9] Settled religious practice, for example, of the Roman Catholic and Episcopal traditions has for centuries included the practices of individual confessions and "spiritual direction." *See* Pet. Br. at 15-17 & nn.15-16.

[10] Modern business techniques, including business terminology and promotional methods, have been used by many American religious groups for well over a century. *See* W. McLoughlin, Jr., *Modern Revivalism: Charles Grandison Finney to Billy Graham* 166-216 (1959). Indeed, the use of business techniques and terminology in proselytization is common among contemporary religious groups, including mainstream denominations. *See, e.g.*, Sellers, *Market Research and the Local Church*, Ministries Today, Sept./Oct. 1988, at 58; Goldman, *Archdiocese Tries Market Research*, New York Times, June 20, 1986, at B-3; Alsop, *Advertisers Promote Religion in a Splashy and Secular Style*, Wall Street Journal, Nov. 21, 1985, at 33; Yao, *Big Pitch for God: More Churches Try Advertising in Media*, Wall Street Journal, Dec. 31, 1979; Stiansen, *Thou Shalt Advertise*, Adweek, May 5, 1986 at 34; Maloney, *How Churches Try to Woo the Yuppies*, U.S. News & World Report, Aug. 26, 1985, at 64.

this Church is certainly not unique in "seeking to make [its religious] services attractive to persons having no prior connection to or involvement with the Church." Gov. Br. at 23.

The commonly used term for such promotion of religion is proselytization. Proselytizing is a well-recognized form of religious activity and does not transform a tax-exempt church into a commercial enterprise. *See Staples*, 821 F.2d at 1326-27 (quoting *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943)).

3. *The Form Of The Transaction.*

The government stresses the "form" of the transactions at issue. For example, the government recites that the "Church offered a 5% advance payment discount" (Gov. Br. at 23); that the Church encouraged members to "'buy training and processing'" (*id.* at 25 n.13); that "'Customer's Order' forms" recorded fixed donations as "'sale[s]'" (*id.* at 26); and that one of the petitioners whose cases were tried below received a "'billing'" for auditing sessions (*id.*). The government also makes much of the fact that this Church sometimes makes refunds.[11] *Id.* at 4. This litany emphasizes the "form" or

[11] The issue of refunds for auditing sessions that are paid for, but not taken, was also emphasized by the Ninth Circuit in *Graham*, 822 F.2d at 849 ("[T]he right of refund if the service was not performed . . . underscore[s] that the payment matched, with some precision, the benefits to be received."). As illustrated by church law associated with Mass stipends, however, the availability of refunds may be a complicated matter of doctrinal interpretation rather than indication of a commercial transaction. *See* C. Keller, *Mass Stipends* 81-82 (1925) ("[I]t seems that according to Canon law the giver of a [Mass] stipend has a right to demand either the

"structure" of the transactions. IRS interpretations of § 170, as with other provisions of the Internal Revenue Code, heretofore have turned on the substance, not the form, of the transaction.[12] *See* Pet. Br. at 30-31; *Staples*, 821 F.2d at 1327 (quoting *Oppewal v. Commissioner*, 468 F.2d 1000, 1002 (1st Cir. 1972)) (classification of a payment depends upon more than the bookkeeping methods used by the charitable institution).

This Court, likewise, has long recognized that tax consequences turn on substance, not form—that the underlying essence of a transaction determines its taxability. *See, e.g., United States v. Phellis*, 257 U.S. 156, 168

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money or the celebration and application of a Mass.") (citing Canon 829) (footnote omitted). Refunds have also been considered, and sometimes offered, by other denominations. *See, e.g., St. Petersburg Church Offers a 'Money Back Guarantee'*, St. Petersburg Times, June 1, 1988 at 4 (Reformed Episcopal church will refund donations if contributors "feel they have not gained spiritually" from attending worship services). The decision whether or not to offer refunds is a matter for internal church policy. *Cf.* 2 National & International Religion Report, No. 12 at 4 (June 20, 1988) (Permanent Judicial Commission of Presbyterian Church considered and rejected members' claim to refund based on disagreement between members and session, on ground that individuals may not dictate the manner in which a session discharges its responsibilities).

[12] In 1919 the IRS emphasized this point, stating "In *substance*, is believed that [pew rents, assessments, church dues and the like] are simply methods of contributing, although in *form* they may vary." A.R.M. 2, 1 C.B. 150 (1919) (emphasis added).

To take but two other examples, Rev. Rul 67-246, 1967-2 C.B. 104, the key IRS administrative pronouncement regarding deductibility under § 170, considers a variety of payments by taxpayers in connection with a number of common fund-raising techniques. In detailing its guidelines for deductibility through thirteen separate examples, the IRS invariably looked to the substance, not the form, of the transaction. The IRS's most recent application of the principles announced in that ruling, Rev. Rul. 86-63, 1986-1 C.B. 88, addresses four specific fact situations in which contributions to athletic scholarship programs provide taxpayers preferred seating at athletic contests. In each case the IRS looked to substance rather than the form of the transaction in determining the amount of allowable deduction.

(1921) (treating the superiority of substance over form as well-settled in tax adjudication). The substance of the transaction at issue here—a payment made by taxpayers to enable them to participate in the religious sacraments of their faith—is an extremely common one, one that has never before been disallowed deduction under § 170.

4. *Other "Facts" Advanced By The Government In An Effort To Distinguish Other Religions Merely Confirm The Unprincipled Nature Of The Government's Position.*

The government apparently agrees with petitioners that whether the amount of a donation is set by the Church or the donor is not controlling and advances other factual distinctions among religions to limit the disallowance of deductions to members of the Scientology Church. The government, for example, advances the following facts as important in determining deductibility under § 170: (1) whether the religious service "would be said anyway without the payment" (Mass stipends); (2) the nature of "worthiness" standards that—in addition to the required payment of a fixed sum—enable the member to participate in sacraments (Mormon tithes); (3) whether fixed payments are tied to financial status (Temple dues); and (4) whether "arrangements" are made "for people of limited means" to participate in the religious service (Jewish High Holy Day tickets). Gov. Br. at 43-44.

These claimed distinctions not only are irrelevant under § 170, but also sometimes are based upon erroneous premises. Mass stipends, for example, are often given for Masses said specifically for the purpose specified by the donor. *See, e.g.*, Coriden, Green & Heintshel, *The Code of Canon Law: A Text and Commentary* 669 (1985) (Canon 948: "Separate Masses are to be applied for the intention for which an individual offering, even if small, has been made and accepted."). Likewise, although the government claims otherwise (Gov. Br. at 4 n.3), the record shows that auditing is provided free by

the Church of Scientology to members in crisis situations, due, for example, to alcohol or drugs. Pet. Br. at 7; *Church of Scientology of Calif. v. Commissioner*, 83 T.C. 381, 424 (1984). Contrary to the government's implicit suggestion, the tax code does not distinguish among religions based upon whether they provide specific benefits to addicts or indigents.

Further, the fact that observant Mormons abstain from alchohol does not in any way reduce the "inflexibility" of the connection between tithing and Temple recommends. Tithing is mandatory; without it Mormons are not admitted to the Temple even if they abstain from using alcohol. *See* Church of Jesus Christ of Latter-Day Saints, *General Handbook of Instruction* 10-1 (1985). The government also defends deductibility of Mormon tithes stating that "uniike the payments here, tithing is not a 'ticket' to a Temple recommend." Gov. Br. at 44. Of course, it must then find other "facts" to defend deductibility of "tickets" to Jewish High Holy Day services. *Id.*

The payments to mainstream religions discussed by the government, like those at issue here, are fixed in amount by the church or synagogue and enable the payor to participate in religious services of his or her faith. In the government's repetitive trope, the "*quid*" and the "*quo*" of each of the transactions are the payment of fixed donations and participation in religious services, respectively. If the IRS is permitted—as the government insists is its right—to pick and choose among various "facts" to select which payments are deductible and which are not, discrimination against new and unfavored religions is inevitable.

II. THE DECISIONS BELOW VIOLATE THE RELIGION CLAUSES OF THE FIRST AMENDMENT.

Rather than facing squarely the impairment of religious liberty created by the IRS's attempt to deny deductions in an arbitrary and inconsistent manner, the government argues only that the government has a "compelling interest" in a sound tax system. This unremarkable statement is not disputed by the petitioners. Indeed, as pointed out in petitioners' brief, the soundness of the nation's tax system will be *undermined*, not bolstered, by the disallowance of the deductions at issue here. Pet. Br. at 48 n.62.

The IRS's proposed departure from its long-standing practice of allowing charitable deductions for fixed donations to churches in return for participation in religious services unconstitutionally will entangle the government in religious practices[13] and will create denominational preferences. *Larson v. Valente*, 456 U.S. 228 (1982); *Walz v. Tax Commission*, 397 U.S. 664, 674 (1970); Pet. Br. at 37-49.

Furthermore, as the government acknowledges, denial of a deduction for the contributions at issue here would place a governmental burden on the free exercise of petitioners' religion. Gov. Br. at 48. At the same time, the government claims, analogous fixed donations to other religions would remain deductible. Yet, rather than address this disparate treatment of religions, the government asserts merely that "even-handed administration of the tax laws" outweighs virtually any burden on religion. Gov. Br. at 48. This argument is unpersuasive in these

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[13] The government cites *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985) for the proposition that "administrative contact [between government and religion] does not ordinarily raise First Amendment concerns." Gov. Br. at 49. In that case, however, the Court expressly distinguished the minimum wage and reporting requirements imposed on all business employers from the unconstitutional entanglement that would result from similar requirements being placed on "evangelical activities" or other exclusively religious conduct. 471 U.S. at 305. Because the instant cases involve religious activity, the prolonged and invasive inquiries that would be necessary to value religious services or to develop other "appropriate" facts concerning the challenged church's fund-raising and other religious practices constitute precisely the kind of entanglement warned against in *Tony & Susan Alamo Foundation*.

cases.[11] Here, "even-handed administration of the tax laws" demands that fixed donations for auditing or training be allowed deduction like similar payments for other religious services, such as Mormon tithes, Mass stipends, and High Holy Day tickets.

CONCLUSION

The judgments of the Courts of Appeals should be reversed.

Respectfully submitted,

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[11] The invocation of *United States v. Lee*, 455 U.S. 252 (1982), Gov. Br. at 48, does not meet the burden of showing a compelling interest and a narrowly tailored infringement of religion. Two vital differences distinguish this case from *Lee*. First, § 170 already provides for deductions for contributions to religious organizations. Indeed, the tax code in many places treats religion specially. *See* AJC Br. at 9 n.2. Second, such deductions have always been allowed in the past, and, rather than undermining the administration of the tax system, they have proved easy to administer and even-handed among religions. The compelling interest in uniform and efficient functioning of the social security system was the basis of the Court decision in *Lee*; in the instant cases, similar donations have uniformly been permitted deduction. Consistent and efficient functioning of the tax system, therefore, dictates that the petitioners' contributions be held deductible.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

KATHERINE JEAN GRAHAM, RICHARD M. HERMANN, AND DAVID FORBES MAYNARD,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Writ Of Certiorari To The United States Courts Of Appeals For The First And Ninth Circuits

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BRIEF FOR COUNCIL ON RELIGIOUS FREEDOM AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*

The Council on Religious Freedom is a nonprofit corporation formed to uphold and promote the principle of religious liberty. The organization's objectives and purposes include promoting the constitutional principle of the free exercise of religion, opposing any encroachment by governmental agencies which would limit or tend to inhibit such exercise, and responding to other acts interfering with the full experience of religious freedom.

The Council is a membership organization with dues-paying members located throughout the United States. The Board of Directors of the Council on Religious Freedom is composed of individuals who are active in religious affairs, some in an official capacity and some on a lay basis, but all recognize the importance of preserving and promoting the right of religious organizations to carry out their ministries free from governmental intrusion, whether that interference be from the Executive, Legislative, or Judicial Branches of the government.

The Council on Religious Freedom speaks to the legal issues raised in this litigation, not because they support the doctrinal interests of or align themselves with the Church of Scientology, but because it is concerned with what it perceives to be the Tax Court's and the First and Ninth Circuit Courts' of Appeal flawed analyses of the charitable deduction provisions of the Internal Revenue Code.

The Council believes that the decisions of the Tax Court and the First and Ninth Circuits will result in government entanglement with church affairs which may ultimately jeopardize the charitable deduction provisions of the Internal Revenue Code as they relate to religious organizations generally.

The Council further believes that its broad perspective on the matters of church-state separation and government intrusion into church affairs, as well as its particular knowledge of various religious beliefs and practices, enable it to bring a dimension of analysis before this Court not necessarily presented by the parties.

SUMMARY OF ARGUMENT

Amicus curiae contends that the only constitutionally appropriate test that may be applied to charitable contributions made by a church member to his or her church under 26 U.S.C. § 170(a) is the objective determination of whether there is a measurable economic or financial benefit received or expected by the donor and that the expectation of a spiritual benefit unaccompanied by such a financial benefit should not render any payment to a religious organization non-deductible as a contribution.

The decisions of both the First Circuit in *Hernandez* v. *Commissioner*, 819 F.2d 1212 (1st Cir. 1987), and the Ninth Circuit in *Graham* v. *Commissioner*, 822 F.2d 844 (9th Cir. 1987), appear to violate the requirement of neutrality which the Religion Clauses of the First Amendment impose upon the government of the United States. Likewise, these decisions require the Judicial Branch of government to enter into the religious thicket: their approach compels a judicial analysis of religious matters—matters of which the civil courts have no competence.

The contrary result reached by the Second Circuit, with the same set of facts, in *Foley* v. *Commissioner*, 844 F.2d 94 (2d Cir. 1988), and by the Eighth Circuit in *Staples* v. *Commissioner*, 821 F.2d 1324 (8th Cir. 1987), is sensitive to religious practices and more consistent with the policies underlying the statutory provision.

Finally, *amicus curiae* believes that the courts' analyses in *Hernandez* and *Graham* would jeopardize section 170 deductions for all contributions to religious organizations.

ARGUMENT

I. The Holdings Of The Courts In *Hernandez* And *Graham*, Which Conclude That A Charitable Deduction Should Be Denied If A Church Member Gives Money Or Property To His Or Her Church With The Expectation Of Receiving A Spiritual Benefit In Return, Are Inconsistent With Congressional Intent In Enacting Section 170 Of The Internal Revenue Code.

Appellants in *Hernandez* and *Graham*, as well as the taxpayers in *Staples* and *Foley*, are all members of the Church of

Scientology and make "fixed donations" to their church, which are for "various religious services provided by the Church of Scientology." *Graham* v. *Commissioner*, 83 T.C. 575, 580 (1984). This type of "fixed donation" constitutes the majority of the Church of Scientology's funds and is used to pay the costs of church operations and activities. *Id.* at 578. The Second Circuit in *Foley* found that "[a]ppellants were fully aware that the principal support of their church was derived from the payments received from auditing and training." *Foley* v. *Commissioner*, 844 F.2d 94, 97 (2d Cir. 1988).

Under section 170 of the Internal Revenue Code of 1954, individuals are permitted to deduct "any charitable contribution" they make to a "church." The Tax Court in *Graham* specifically held that the payments made by petitioners to their church "were made with the expectation of receiving a commensurate benefit in return." *Graham*, 83 T.C. at 581. It is, however, clear from the opinion that the "benefit" referred to by the court was "religious services." *Ibid.* In *Hernandez* the court stated:

> We find no indication that Congress intended to distinguish the religious benefit sought by Hernandez from the medical, educational, scientific, literary, or other benefits that could likewise provide the *quid* for the *quo* of a nondeductible payment to a charitable organization.

Hernandez, 819 F.2d at 1217. Likewise, the *Graham* court stated:

> It is also the rule that the deductibility of a contribution does not depend on whether the benefits received in return are secular or religious.

Graham, 822 F.2d at 849.

> Conversely, the court in *Foley* specifically held:
>
> The individual benefits gained by appellants through participation in their religious rituals, and the payment of fixed fees for that participation, cannot be considered so equivalent as to pass the donation/purchase line. . . . As in the case of the deductible donation described previously, it must be presumed that the primary purpose of the dona-

> tions was a charitable expectation that the religious causes of the Church would be furthered, *Murphy* v. *Commissioner*, 54 T.C. 249 (1970), and that only incidental benefits accrued to the individual donors. In any event, there is no way of measuring spiritual or religious benefits in such a way as to conclude that they are "commensurate" with the fees paid for participation in the religious activities giving rise to those benefits.

Foley v. *Commissioner*, 844 F.2d at 97.

Similarly, the court in *Staples* stated:

> Finally, as the Staples suggest in their brief, "our tax system does not treat religious services as commodities that are purchased in commercial transactions." Form sometimes is important in identifying a § 170 contribution because a payment appearing to be a purchase of an item of value creates the presumption that the transaction was not a donation. Rev. Rul. 67-246, 1967-2CB 104, 105. Regardless of form, however, no similar presumption can arise when the item "purchased" was the right to participate in religious practice. Spiritual gain to an individual church member cannot be valued by any measure known in the secular realm. As the Tax Court stated, privileges arising from church membership "are not significant return benefits that have a monetary value within the meaning of § 170." *Murphy* v. *Commissioner*, 54 T.C. 249, 253 (1970). The establishment by a church of a set "price" for religious participation does not change the nature of the benefit of religion to the individual or to society. If the Scientologist "prices" were deemed to make participation in their religious services a material, financial, or economic benefit such that the Staples' payments were not contributions, then "the passing of the collection plate in church would make the church service a commercial project." *See Murdock* v. *Pennsylvania*, 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed. 1292 (1943).

Staples, 821 F.2d at 1327.

The overriding concern to *amicus* Council on Religious Freedom is whether the receipt or expectation of a spiritual, as distinguished from an economic or financial, benefit by a church member will prevent the tax deductibility of a donation

made to a church. Section 170 of the Code provides, subject to certain limitations, a deduction for contributions to or for the use of organizations described in Internal Revenue Code § 170(c).

The Internal Revenue Service has held that "a contribution or gift is a voluntary transfer of money or property made by the transferor without receipt or expectation of a *financial or economic benefit* commensurate with the money or property transferred." Rev. Rul. 76-185, 1976-1 C.B. 60 (emphasis added). It has also ruled that "[a] gift for the purpose of section 170 of the Code is a voluntary transfer of money or property that is made with no expectation of procuring a commensurate *financial benefit* in return for the transfer." Rev. Rul. 72-506, 1972-2 C.B. 106 (emphasis added). *See also* Rev. Rul. 76-232, 1967-1 C.B. 62.

In Rev. Rul. 71-580, 1971-2 C.B. 235 the Internal Revenue Service found that a nonprofit organization formed to compile genealogical research data on its family members, in order to perform religious ordinances in accordance with the precepts of the religious denomination to which they belonged, qualifies for exemption from federal income tax under § 501(c)(3) of the Internal Revenue Code. In that ruling the IRS noted that the services were paid for by church members through "membership fees" (presumably fixed) to provide genealogical research information to a church to enable it to conduct certain religious ordinances in accordance with basic religious doctrines of the church.

The ruling specifically held:

> The law of charity generally recognizes that the saying of mass or the conduct of similar religious observances under the tenets of a particular religion are of a *spiritual benefit* to all of the members of that faith and to the general public. Any *private benefit to a given family or individual* that may result is regarded as merely incidental to the general benefit that is served. Therefore, the subject organization is similarly accomplishing a charitable purpose by engaging in an activity that advances religion. [emphasis added]

Id. at 236.

A more recent revenue ruling, Rev. Rul. 80-302, 1980-2 C.B. 182, distinguished the facts in Rev. Rul. 71-580, 1971 C.B. 235 from a situation where an organization compiles family genealogical research data for use other than to conform to the religious precepts of the family's denomination. In Rev. Rul. 80-302, 1980-2 C.B. 182-183 the IRS stated: "Rev. Rul. 71-580 is also distinguishable because the genealogical research data in the instant ruling is not compiled in order to perform religious ordinances in accord with the precepts to which the family members belong."

In *Haak* v. *United States*, 451 F.Supp. 1087 (W.D. Mich. 1978), cited by the Tax Court in *Graham*, 83 T.C. at 581, the district court, citing S.Rep. No. 1622, 83d Cong., 2d Sess., (1954), 1954 U.S. Code Cong. & Admin. News, pp. 4621, 4830-31; H.R. Rep. No. 1337, 83d Cong., 2d Sess. (1954), 1954 U.S. Code Cong. & Admin. News, pp. 4017, 4180, concluded that "[t]he legislative history of the Internal Revenue Code of 1954 indicates that a primary factor to be considered in determining whether a transaction is a charitable contribution is whether the 'contribution . . . [is] made with no expectation of a *financial return* commensurate with the amount of the gift.'" (emphasis added).

In *Haak*, 451 F.Supp. at 1091, the court also held that "the structuring of section 170 manifests a congressional intent to focus on the *use* to which an alleged contribution is put, *rather than on the state of mind of the transferor.*" The district court in *Haak* also suggested that in "[r]eading the Revenue Act of 1950 (26 U.S.C. §§ 511, *et seq.*), in conjunction with section 170, when a charitable organization is engaged in one of the charitable activities enumerated by Congress, contributions in furtherance of those activities are to be encouraged and therefore properly exempt from taxation." *Id.*

The court in *Haak* also noted that Congress was concerned that such contributions not be used to obtain services similar to those provided by private business, since this would provide an

unfair advantage to the charitable organization. *Id.* The court indicated, contrary to the judicial inquiry made by the Tax Court below, that "there is good reason to avoid unnecessary intrusions of subjective judgments as to what prompts the financial support of the organized but non-governmental good works of society." *Id.* at 1091-1092.

The congressional intent, therefore, seems to dictate that the rule to be followed in determining whether payments made by a member to his or her church are deductible must not be based upon subjective, administrative or judicial analysis. The government and the courts therefore should not look so much to the state of mind of the giver but rather to the use to which the donation is put.

The "fixed donations" the Church of Scientology receives are the primary source for the support of the church's operations and activities. *Graham*, 83 T.C. at 578. Congress has determined that the operation of a religious organization is an activity which is to be encouraged by tax exemptions and charitable deductions. The providing of "spiritual services" also does not collide with congressional concerns respecting unfair competition between charitable organizations and private business.

Therefore, the appropriate test to be applied, and the test which has been applied in the past, is objective—that is, whether there is a measurable economic or financial benefit received or expected by the donor. The expectation of a spiritual benefit unaccompanied by such a financial benefit should not render any payment to a religious organization *non-deductible* as a contribution under section 170 of the Internal Revenue Code.

We believe that the Eighth Circuit correctly perceived the congressional intent of section 170 when it stated that "[a] construction of section 170 sensitive to religious practice would be consistent with the policies underlying the statutory provision." *Staples*, 821 F.2d at 1326.

In *Staples* the court correctly held:

> In sum, we conclude that regardless of the timing of the payment or details of the church's method of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of § 170.

Staples, 821 F.2d at 1327. *See also Foley* v. *Commissioner*, 844 F.2d at 97, citing *Staples*.

II. The Holdings Of The Courts In *Hernandez* And *Graham* That The Expectation Of A Spiritual Benefit Voids The Deductibility Of A Church Member's Contribution Violate The Religion Clauses Of The First Amendment To The United States Constitution.

The "financial benefit" test here advanced and previously used by the Internal Revenue Service is consistent with the requirements of the Religion Clauses of the First Amendment. In order to make an appropriate constitutional analysis of the decision in the instant case, it is first necessary to determine whether the interpretation made by the IRS violates fundamental rights requiring strict scrutiny and exacting judicial review. *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290, 294 (1981); *Elrod* v. *Burns*, 427 U.S. 347, 362 (1976).

Murdock v. *Pennsylvania*, 319 U.S. 105, 111 (1943), suggests that the power to tax religious activities is the power to destroy a church. In *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664, 692 (1970), the Court was sensitive to the fact that "the cessation of 'tax' exemptions would have a significant impact on religious organizations." (Brennan, J., concurring). In fact as Justice Brennan noted in his concurring opinion in *Walz*, "[b]y diverting funds otherwise available for religious or public service purposes to the support of Government, taxation would necessarily affect the extent of church support for the enterprises that they now promote." *Id.* at 692.

Recently this Court suggested a similarity between tax exemptions and tax deductions, contending that both "are a form of subsidy that is administered through the tax system." *Regan* v. *Taxation With Representation*, 461 U.S. 540, 544 (1983). The denial of tax benefits to a religious organization will inevitably have a substantial impact on the operation of the organization. *Bob Jones University* v. *United States*, 461 U.S. 574, 603, 604 (1983). It is clear that a tax deduction does constitute, at least, indirect aid to the charitable organization. *Committee for Public Education and Religious Liberty* v. *Nyquist*, 413 U.S. 756, 790-791 (1973); *see* also *Mueller* v. *Allen*, 463 U.S. 388 (1983). The elimination of such a deduction therefore must constitute a burden on religion subjecting the governmental action to constitutional review under the Religion Clauses of the First Amendment to the United States Constitution.

It is not sufficient to say, as the Tax Court did in this case, that "[i]t is well established that there is no constitutional right to a tax deduction." *Graham*, 83 T.C. at 581. Whether there is a constitutional right to a tax deduction is not the issue. Here, Congress has determined that tax deductions will be granted for contributions and donations to charitable organizations, including churches.

The court in *Hernandez* at least contended that although "[i]t is clear that while the First Amendment does not require the government to provide a tax deduction for gifts to religious and other charitable institutions . . . once it has created such a tax benefit, the government may not condition receipt of the benefit upon the abandonment of religious beliefs or practices." *Hernandez* v. *Commisioner*, 819 F.2d at 1221.

In scrutinizing the decision of the Internal Revenue Service, it is necessary to consider the admonition of the Court in *Larson* v. *Valente*, 456 U.S. 228, 244 (1982), wherein the Court stated "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." Justice Harlan indicated in his concurring opin-

ion in *Walz* v. *Tax Commission*, 397 U.S. 664, 696 (1970) (Harlan, J., concurrng), that while a government may be neutral,

> neutrality in its application requires an equal protection mode of analysis. The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders.

The Tax Court's exclusion from tax deduction status of "fixed donations" made by a church member to his or her church, where spiritual benefits may be expected in return, requires a careful assessment of whether scrupulous neutrality was observed in making this exclusion. *See Roemer* v. *Board of Public Works*, 426 U.S. 736, 745-746 (1976). In *Everson* v. *Board of Education*, 330 U.S. 1, 15, 18 (1947), the Court warned that government must "be neutral in its relations" with religion. Likewise in *Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952), the Court declared "[t]he government must be neutral when it comes to competition between religious sects. . . ."

In *Larson* v. *Valente*, 456 U.S. at 245, the Supreme Court observed relative to the principle of religious neutrality that:

> This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause. . . . Madison's vision—freedom for all religion being guaranteed by free competition between religions—naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can only be guaranteed when legislators—and voters—[and the Internal Revenue Service] are required to accord to their own religions the very same treatment given to small, new or unpopular denominations.

The issue is not whether the petitioners in this case were precluded from engaging in constitutionally-protected activities. *Graham*, 83 T.C. at 582. Nor is the issue whether the petitioners should be permitted to have their constitutionally-

protected activity subsidized. *Id.* The issue is whether the petitioners, as members of a new, small church were treated with the same neutral benevolence by the government as members of other churches. Once government has made the determination to permit tax deductions for charitable donations made to religious organizations, then the government is required to be *scrupulously neutral* in deciding the question of deductibility.

The Tax Court apparently believed, and the Ninth Circuit affirmed, that the interpretation made by the Internal Revenue Service, here at issue, is not subject to constitutional attack because the test for determining the deductibility of claimed charitable contributions is based upon secular criteria. *Id.* at 583. The relevant distinction, however, is not whether the test is based upon a secular criteria. Rather, the question is whether there has been unequal treatment accorded to certain churches and their members by the Internal Revenue Service's determination, even if this determination is based upon secular criteria.

The court in *Hernandez* rejected the contention that the disallowance of the deduction "communicates any disfavor for his religious beliefs or practices." *Hernandez* v. *Commissioner*, 819 F.2d at 1224. It also rejected the claim that Hernandez "is the victim of selective enforcement by the IRS." *Id.* at 1225. *Amicus*, however, believes that differential treatment by the IRS has in fact placed a burden on an interest protected by the First Amendment. In *Minneapolis Star & Tribune Co.* v. *Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983), the Supreme Court dealt with a use tax on the cost of paper and ink products consumed in the production of publications. The statute contained a $100,000 exemption provision.

Justice O'Connor, in writing the majority opinion concerning a special tax that singled out a small portion of the press for separate treatment, held that, "A tax that burdens rights protected by the First Amendment cannot stand unless the bur-

den is necessary to achieve an overriding governmental interest." *Id.* at 582-583. Justice O'Connor explained:

> . . . [D]ifferential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional. . . . [citations omitted] Differential taxation of the press, then, places such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation.

Id. at 585.

In *Elrod* v. *Burns*, 427 U.S. 347, 362 (1976), the Court directed its attention to the exacting scrutiny that must be applied even when there is only indirect governmental action burdening First Amendment rights.

> "This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, *not through direct governmental action*, but *indirectly as an unintended but inevitable result of the government's conduct* . . ." [citation omitted]. Thus encroachment "cannot be justified by a mere showing of a legitimate state interest" . . . [citation omitted] The interest advanced must be paramount, one of vital importance, and *the burden is on the government to show the existence of such an interest.* [emphasis added]

Most churches suggest a spiritual reward will be received by one making a contribution to the church.[1] It would be repug-

---

[1] Malachi 3:10, a scripture of the Bible's Old Testament setting forth the principle of tithing followed by many churches, states: "Bring ye all the tithes into the storehouse, that there may be meat in mine house, and prove me now herewith, saith the Lord of hosts, if I will not open you the windows of heaven, and pour you out a blessing, that there shall not be room enough to receive it."

Both the Seventh-day Adventist Church and the Church of Jesus Christ of Latter-day Saints subscribe to the Biblically based doctrine

nant to First Amendment principles if the offer of such a

of tithing wherein 10% of an individual's increase (income) is contributed to the church in addition to other offerings. In the publication issued by the Seventh-day Adventist Church entitled *Counsels on Stewardship*, Ellen G. White, one of the church's founders, deals with "the message of Malachi," stating:

> The Lord calls for His tithe to be given to His treasury. Strictly, honestly, and faithfully, let this portion be returned to Him. Besides this, He calls for your gifts and offerings.

E.G. White, *Counsels on Stewardship* at 82. The author, in discussing the tithing responsibility, commented on a church member who had failed to pay his tithe and who had thereafter given a promissory note to the treasurer of the church for the unpaid amount of the tithe. The author related that this note stated "[f]or value received, I promise to pay—" and explained that the church member who had failed to pay his tithe stated, "Have I not been receiving the blessings of God day after day? Have not the angels guarded me? Has not the Lord blessed me with all spiritual and temporal blessings? For value received, I promise to pay the sum of $571.50 to the church treasurer." *Id.* at 95-96.

In this same publication under the section entitled "The Reward of Faithful Stewardship," the author, who holds a special place in the Seventh-day Adventist Church, discussed temporal blessings that are bestowed upon the benevolent:

> Whenever God's people, in any period of the world, have cheerfully and willfully carried out His plan in systematic benevolence and in gifts and offerings, they have realized the standing promise that prosperity should attend all their labors just in proportion as they obeyed His requirements. When they acknowledged the claims of God, and complied with His requirements, honoring Him with their substance, their barns were filled with plenty.

Id. at 347.

David O. McKay, the ninth president of the Church of Jesus Christ of Latter-day Saints, in his book *Gospel Ideals* (1953), explained that "tithing consists 'of one-tenth of all the interest annually.'" McKay, *Gospel Ideals* 197 (1953). He stated that "[t]o members of the Church of Jesus Christ, therefore, tithing is as much a law of God as is baptism." *Id.* He further explained that tithing "is God's plan of raising revenue for the Church." *Id.* at 198. "[A]side from these social and temporal benefits resulting from a compliance to this law as a social factor, tithing makes its greatest appeal to the sincere mind because of its spiritual significance. It is an unfailing source of spiritual power." *Id.* at 199.

spiritual reward nullifies the benefit of section 170. To so hold would require the civil courts to enter a religious thicket from which they are constitutionally barred. Courts' involvement in selecting which spiritual rewards do, and which do not, jeopardize section 170 treatment can only lead to unequal and therefore discriminatory action upon the part of the Internal Revenue Service.[2]

The Internal Revenue Service has previously upheld deductions for pew rentals, building fund assessments, and periodic dues paid to a church. Rev. Rul. 70-47, 1970-1 C.B. 49. *See also* A.R.M. 2, C.B. 1, 1500 (1919). In Rev. Rul. 78-366, 1978-2 C.B. 241, the Internal Revenue Service indicated that an estate tax deduction is allowable for a bequest made to a church to say regularly scheduled masses for deceased members.[3] The

[2] A holding that a Scientologist is not entitled to a charitable deduction because he receives spiritual benefits in return for the contribution seems strangely inconsistent with the Internal Revenue Service's treatment of contributions to a religious order by a member of that order who, by reason of membership, is entitled to lifetime care and support by that religious community. Those joining religious orders and taking the mandatory vow of poverty, in effect, make a 100% fixed donation to their order in return for which they receive continued support and care. The Supreme Court of Mississippi in *Maas* v. *Sisters of Mercy of Vicksburg*, 99 So. 468, 472 (1924), determined that a vow of poverty was an enforceable contract holding "that as long as they are members enjoying the benefits derived from such membership, which in case of the Sisters of Mercy consists of a home and comfortable support and care in sickness and death, that is sufficient consideration for their obligation to bring all the property received by them during their membership into the community for the benefit of all." *See also Order of St. Benedict of New Jersey* v. *Steinhauser*, 234 U.S. 640 (1914). Nevertheless, Rev. Rul. 76-323, 1976-2 C.B. 18, has stated that members of religious orders employed outside of the religious community are entitled to a charitable deduction under § 170(c)(2) for the amounts donated to the religious order.

[3] The Code of Canon Law (in English translation) in Canon 1264 states:

> Unless the law prescribes otherwise, it is for the provincial Bishops' meeting to . . . determine the offerings on the occasion of the administration of the sacraments and sacramentals.

Council understands that auditing in the Church of Scientology holds the same meaning to a Scientologist as a mass would for a Roman Catholic.

In *Thomas* v. *Review Board of Indiana*, 450 U.S. 707, 714 (1981), the Court stated:

> The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, ... However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

In *Thomas* the Court further indicated that in this "sensitive area" the Court does not have the competence to decide religious matters. *Id.* at 416. It is not constitutionally appropriate for the Internal Revenue Service or the Tax Court to attempt to distinguish between a fee paid to a Catholic Church for a mass to be said for a deceased relative, a membership fee paid to provide genealogical research data in order to perform religious ordinances and a "fixed donation" paid by a Scientologist to his church for an equally meaningful spiritual experience, to the member of that church, so long as they are all paid in accordance with the precepts of the respective religious organization.

A long line of constitutional cases suggests that it is constitutionally inappropriate for civil courts to determine what does and what does not have religious meaning. As the Supreme Court said in *New York* v. *Cathedral Academy*, 434 U.S. 125, 133 (1977):

> The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. . . .

From the above it should be apparent that the Tax Court, in reaching for some meaningful distinction, adopted a test which would directly place the Internal Revenue Service and ultimately the Tax Court in a role which they constitutionally

may not play. The Council suggests that the only test appropriate under the Religion Clauses of the First Amendment to the Constitution of the United States is whether the church member receives a measurable economic or financial benefit, as distinguished from a spiritual benefit. Such a test would apply "neutral principles of law" and could be administered by the IRS and the civil courts without offending the First Amendment to the United States Constitution. *Jones* v. *Wolf*, 443 U.S. 595, 604 (1979).

One can only conclude from the selective determinations made by the IRS in favor of donation for a Catholic mass, and against donation for a Scientology religious service that the determinations are suspect. Council on Religious Freedom is concerned about the possible eventual elimination of all tax deductions for all churches in the event this Court should permit the IRS to allow tax deductions for such selected activities as the celebration of masses for deceased relatives, while excluding practices having a spiritual meaning for Scientology. The very process of selectively applying these interpretations to church organizations creates a high risk of government entanglement with church affairs that may well be the final straw that accomplishes what Justice Brennan warned against in *Walz*:

> Although governmental purposes for granting religious exemptions may be wholly secular, exemptions can nevertheless violate the Establishment Clause if they result in extensive state involvement with religion.

Id. at 689, (Brennan, J., concurring).

There is a total absence of any showing that Congress intended to exclude from section 170 deductibility treatment donations of funds to churches which might also result in the receipt of spiritual services by parishioners. In light of the constitutional problems that are presented by the government's expansion of the "economic benefit" test to include "spiritual benefits," section 170 should be interpreted to exclude such an overly broad extension which would impinge on First

Amendment interests. *See NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

III. The Tax Court Improperly Suggests That The Church Of Scientology, In Providing Religious Services, Operates In A Commercial Manner.

It seems apparent that the Tax Court veered down the wrong road when, in analyzing the facts in this case, it concluded that "[t]he Church of Scientology operates in a commercial manner in providing these religious services." *Graham*, 83 T.C. at 578. This comment is a nonsequitur and involves a concept which flies in the face of earlier decisions of the United States Supreme Court. In *Murdock* v. *Pennslyvania*, 319 U.S. 105 (1943), this Court dealt with a solicitation statute providing for a licensing tax. In that case the ordinance had been applied to itinerant literature evangelists. In its analysis, the Court stated:

> The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus it was stated in *Jones* v. *Opelika*, *supra*, [316 U.S. at] p. 597, that when a religious sect uses "ordinary commercial methods of sales of articles to raise propaganda funds," it is proper for the state to charge "reasonable fees for the privilege of canvassing." Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital.

Id. at 110.

The Court in *Murdock* further commented:

> But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise.

In *Jones* v. *City of Opelika*, 319 U.S. 103 (1943), this Court took the unusual step of reversing its prior decision in the same case, 316 U.S. 584, so as to make the decision of the Court consistent with its decision in *Murdock*. The reasoning in the

dissenting opinion in that case seems similar to the reasoning of the Tax Court in this case. Justice Reed commented:

> And even if the distribution of religious books was a religious practice protected from regulation by the First Amendment, certainly the affixation of a price for the article would destroy the sacred character of the transaction. A literature evangelist becomes also a book agent.
>
> The rights which are protected by the First Amendment are in essence—prayer, mass, sermons, sacraments, not sales of religious goods.

Id. at 132.

Of interest is the fact that even Justice Reed in *Opelika* would have given First Amendment protection to prayers, masses, sermons and sacraments, even though excluding sales of religious goods. In light of the above it would be constitutionally improper for the Tax Court to predicate its decision on any finding that the Church of Scientology, in providing any of its spiritual services, operates in a commercial manner.

CONCLUSION

Accordingly, *amicus curiae* urges this Court to reject the reasoning of the First and Ninth Circuits in *Hernandez* and *Graham* and to embrace the holdings of the Second and Eighth Circuits in *Foley* and *Staples* determining that the order of the Tax Court should be reversed.

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Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT L. HERNANDEZ,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent

KATHERINE JEAN GRAHAM,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent

On Writs of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

BRIEF OF THE AMERICAN JEWISH CONGRESS AND THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

NO. 87-963

ROBERT L. HERNANDEZ,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent

No. 87-1616

KATHERINE JEAN GRAHAM,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent

On Writs of Certiorari to the United States Courts of Appeals for the First and Ninth Circuits

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BRIEF OF THE AMERICAN JEWISH CONGRESS AND THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS

Pursuant to Rule 36.2 of the Rules of this Court, the American Jewish Congress files this brief *amicus curiae* in the above-entitled cases which have been consolidated for argument. The brief supports the position of the petitioners. The American Jewish Congress has filed with the Clerk of the Court the written consents of all parties to the cases.

STATEMENT OF INTEREST

The American Jewish Congress was established in 1918 to uphold the principles of democracy and the religious, civil, political and economic rights of Jews and others. Since its inception, the American Jewish Congress has undertaken, in

accordance with the First Amendment, to support the principle of free exercise of religion and to oppose governmental actions which tend to establish religion.

The National Jewish Community Relations Advisory Council is the national planning and coordinating body for the field of Jewish community relations, and its following national member agencies: B'nai B'rith International, American Jewish Congress, Hadassah, Jewish Labor Committee, Jewish War Veterans of the U.S.A., National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogue of America, Women's League for Conservative Judaism, Women's American ORT; and the 114 community member agencies representing all major Jewish communities throughout the United States. These communities are listed in Appendix A.

The Jewish community, through the actions of its representative agencies and through the National Jewish Community Relations Advisory Council, is committed to the preservation and protection of a vigorous non-governmental sector as well as the freedoms secured by the First Amendment to the Constitution, especially the rights secured by the Establishment and Free Exercise Clauses.

In particular, *amici* are interested in maintaining equal treatment under the law for all religions. That interest has led *amici* to file this brief in support of the petitioners Hernandez and Graham even though they believe that the stipulation that the Scientology Church is a legitimate religion may be erroneous. *See Church of Scientology of California* v. *Commissioner*, 823 F.2d 1310 (9th Cir. 1987). Nevertheless, they believe the stipulation is controlling for the cases before the Court. Notwithstanding their distaste for the Scientology Church, *amici* believe that the legal standards enunciated by the Courts below are a threat generally to all bona fide religious groups.

The cases before the Court present important issues under the Internal Revenue Code and under the Constitution of

the United States with respect to the deductibility of contributions to religious organizations for participation in religious services. The Courts of Appeals below have held that payments made for participation in particular religious services, pursuant to a schedule of payments fixed by the church in question, represent contributions which are nondeductible under section 170 of the Internal Revenue Code. They have reached this conclusion because they believe that the religious services and benefits secured by these contributions represented a "quid pro quo," and that the religious services were equal in value to the amount of the monetary contributions.

In the *Hernandez* case, the Court also held that the denial of deductions was not a significant or inappropriate burden on the free exercise of religion. In the *Graham* case, the Court held that the denial of deductions was necessary because of the overwhelming importance of maintaining a "sound and uniform tax system."

The decisions of the Courts below contradict rulings of the Internal Revenue Service, and practice thereunder, which have prevailed without question for more than seventy years. The rulings recognize the deductibility of contributions to churches, in the form of amounts specified by those churches to be paid for pews, assessments, and dues. The original ruling in 1919 (A.R.M. 2, 1 C.B. 150), which has been reiterated in rulings over the intervening years, was a contemporaneous construction of the deduction provisions contained in the predecessor section to section 170 of the Internal Revenue Code.

If allowed to stand, the decisions below would put into question the deductibility of contributions for a wide range of religious services and contradict the favorable rulings outstanding on the deductibility of such contributions.[1] These contributions include amounts paid for participation

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[1] *See Hernandez* v. *Commissioner*, 819 F.2d 1212, 1227 (1st Cir. 1987); *Graham* v. *Commissioner*, 822 F.2d 844, 850 (9th Cir. 1987); *Foley* v. *Commissioner*, 844 F.2d 94, 97-99 (2d Cir. 1988) (Newman, J., dissenting); *Christensen* v. *Commissioner*, 843 F.2d 418, 421 (10th Cir. 1988) Seymour, J., dissenting).

in Jewish High Holy Day services (Yom Kippur and Rosh Hashanah) and a variety of contributions to other churches. For example, they put in question the deductibility of tithing contributions to the Mormon Church, as well as Church-specified support payments for Mormon missionaries. Similarly, they raise serious questions as to the deductibility of payments for pews in Protestant Churches and any other dues or assessments that may be made by those Churches. They challenge contributions for special Masses of the Catholic Church. In each of these situations, the argument may be made that a "quid pro quo" for monetary contributions has been provided in the form of religious benefits and services, and the contributor has received commensurate benefits for his money.

In the view of the American Jewish Congress and The National Jewish Community Relations Advisory Council, contributions to any church, whether in an amount determined solely by the contributor or an amount set by the church, in exchange for membership in a church or participation in religious services should remain deductible under section 170 of the Internal Revenue Code.

STATEMENT OF BASIC FACTS

Amici will not attempt to review the records of the cases before the Court. However, certain facts and conclusions of fact are so indisputable and fundamental that they virtually dictate the proper outcome of these cases. See *Staples* v. *Commissioner,* 821 F.2d 1324, 1325-26 (8th Cir. 1987). It has been stipulated, in the Tax Court trial of *Graham* v. *Commissioner,* 83 T.C. 575, 576 (1984), that the Church of Scientology is (i) a religious organization, (ii) a church within the meaning of section 170(b)(1)(A)(i), and (iii) a tax-exempt religious organization under sections 501(a) and (c)(3) and 170(c)(2) of the Internal Revenue Code. The stipulations on these matters were accepted in both Courts of Appeals below. *Hernandez* v. *Commissioner,* 819 F.2d 1212, 1216 (1st Cir. 1987); *Graham* v. *Commissioner,* 822 F.2d 844, 846 (9th Cir. 1987). It is also clear that the "auditing" process of the Church of Scientology is a core

religious practice of that Church. *See* Stip. 15-23; *Graham* v. *Commissioner,* 83 T.C. 575, 580-81 (1984); *Hernandez* v. *Commissioner,* 819 F.2d 1212, 1215 n.1 (1st Cir. 1987); *Graham* v. *Commissioner,* 822 F.2d 844, 846 (9th Cir. 1987); *Christensen* v. *Commissioner,* 843 F.2d 418, 419 (10th Cir. 1988). Finally, it is clear that the taxpayers' contributions for auditing participation were made directly to the Church of Scientology for its support and maintenance. Stip. 39, 53; *Graham* v. *Commissioner,* 83 T.C. 575, 580-81 (1984); *Staples* v. *Commissioner,* 821 F.2d 1324, 1325 (8th Cir. 1987); *Graham* v. *Commissioner,* 822 F.2d at 847. The parties in *Hernandez* also stipulated that a "petitioner's subjective intent" was not to be found as a fact in the cases. *Hernandez* v. *Commissioner,* 819 F.2d at 1215.

SUMMARY OF ARGUMENT

From the time of the earliest income tax acts more than seven decades ago to the present Internal Revenue Code, the income tax laws have recognized the tax-exempt status of religious organizations and the deductibility of contributions, in whatever form, to religious organizations. Almost at the inception of this exemption and deduction legislation, the Internal Revenue Service ruled that contributions in amounts determined by either the payor or the church were fully deductible. The original ruling has been reiterated in more recent rulings, and deductions for contributions for the benefit of churches have been consistently claimed by contributors and allowed by the Service. If a change is now to be made in the established law and practice, it should be made by Congress, and not as the result of an *ad hoc* litigating position of the Internal Revenue Service, without even a declared reversal of published rulings which contradict that litigating position.

No economic "market" exists for religious services or for participation in religious rites and ceremonies. No monetary, commercial, economic or financial benefit or offset accrues to the contributor-participant in the form of such religious services. To the contrary, participation in religious

matters is, by definition, nonsecular, spiritual and intangible, and both the Service and the courts have heretofore so held. It confounds American principles, and is almost absurd, to attempt to value religious services as the "quo" to the "quid" of monetary contributions. Nor does it make sense to attempt to value religious benefits, in exchange for contributions, by and at precisely the amounts contributed. The syllogisms of the Courts below are founded on erroneous premises and misleading tautologies.

However invidious the beliefs and practices of the Church of Scientology may appear to many, the principles stated above apply equally to it as to any other religion. This is a direct consequence of the several controlling stipulations of the parties in the Tax Court below. The Courts of Appeal cannot, as a matter of law, undermine the stipulations and undisputed factual determinations by substituting their own conclusions in lieu thereof. For example, *Graham* v. *Commissioner,* 822 F.2d 844, 847, apparently endorses the Tax Court's finding that the goal of the Church of Scientology is "making money." But if, as *stipulated,* the Church of Scientology is a tax-exempt religious entity, its "goal" plainly is not "making money" any more than making money is the goal of the Catholic Church, Jewish Synagogues, Protestant Denominations and Buddhist Temples.

A purported reliance on the *American Bar Endowment* case (*United States* v. *American Bar Endowment,* 477 U.S. 105 (1986)) by the Courts below misses the obvious and controlling distinctions between that case and the cases here. *American Bar Endowment* involved the purchase of insurance, which is a commercial and financial commodity directly susceptible to market valuation. That case held simply that the difference between the "wholesale" price (after taking into account the receipt of dividends) for insurance paid by the Endowment and the market price paid by the insured was not a charitable contribution. The purchaser personally got *full market value* for his money. In no sense, except the most cynical, can religious participation

and practice be compared to the purchase of marketable insurance.

The analyses of the Courts below are basically faulty in that they stress, and attempt to measure, alleged economic "benefits" to the individual contributors, whereas the traditional and accepted standard has been to allow deductions whenever the contributions favored or benefited the *church or religious entity* involved. Long before he wrote the opinion in the *Hernandez* case, which examines the contributor's motives and benefits received, the same Judge of the First Circuit Court of Appeals cogently (but inconsistently with the approach in the *Hernandez* opinion) observed:

> Were the deductibility of a contribution under section 170(c) of the Internal Revenue Code of 1954 to depend on "detached and disinterested generosity," an important area of tax law would become a mare's nest of uncertainty woven of judicial value judgments irrelevant to eleemosynary reality.
>
> * * *
>
> If the policy of the income tax laws favoring charitable contributions is to be effectively carried out, there is good reason to avoid unnecessary intrusions of subjective judgments as to what prompts the financial support of the organized but non-governmental good works of society.

Crosby Valve & Gauge Company v. *Commissioner,* 380 F.2d 146, 146-47 (1st Cir. 1967), *cert. denied,* 389 U.S. 976 (1967). A charitable contribution is determined by examining the benefit received by a qualifying organization which meets the community, civic and charitable standards for tax exemption under sections 501(c)(3) and 170(c), not by the subjective intent of a particular donor, or by an intangible benefit to the donor that is measured only by the very dollars given.

The decisions below, although particular to the Church of Scientology, threaten the deductibility of contributions to all religions, because all religious participants derive a "benefit"

from their religious engagement. On the logic propounded by the Courts below, contributors in the case of *every* contribution to their churches receive a "quid pro quo" for their contributions. Therefore, there will never be a *net* contribution to be deducted by the contributor. This logic is, however, a great deal less than compelling.

While the Courts below deny that their conclusions significantly burden the First Amendment "free exercise" of the Scientology religion, the specific application of new criteria only to the Church of Scientology, after consistent law and practice to the contrary for other religions presently and over many decades, violates both the First Amendment religious clauses and equal protection under the Fifth Amendment. If nothing else, the audit and fact-finding process used by the IRS in these very cases also involves exactly that "excessive entanglement" in religious matters which the Constitution prohibits.

If deductions for religious contributions are to be eliminated, this is a matter for Congress, not to be left to sporadic litigating forays of the Internal Revenue Service or even to the predilections of the courts. The decisions below should be reversed.

ARGUMENT

I. CONTRIBUTIONS IN WHATEVER FORM IN SUPPORT OF RELIGIOUS ENTITIES ARE DEDUCTIBLE AND HAVE BEEN DEDUCTIBLE FOR MORE THAN SEVEN DECADES; THE SPIRITUAL BENEFITS FROM RELIGIOUS PARTICIPATION RECEIVED BY CONTRIBUTORS DO NOT NULLIFY OR OFFSET THESE DEDUCTIONS

The Internal Revenue Code and published rulings of the Internal Revenue Service provide for the deduction of contributions or gifts to an entity organized and operated exclusively for religious purposes. Sec. 170(a), (c)(2); A.R.M. 2, 1 C.B. 150 (1919); Rev. Rul. 70-47, 1970-1 C.B. 49. The cases below involve nothing more than contributions to entities

organized and operated exclusively for religious purposes. On the face of the statute and rulings, the contributions in question are deductible.

In 1913 Congress enacted the legislation which provided for an income tax exemption for religious organizations. Act (Tariff and Revenue) of Oct. 3, 1913, ch. 16 § IIG, 38 Stat. 172. During World War I, Congress enacted the War Revenue Act of 1917 which contained a predecessor section to section 170 of the present Internal Revenue Code, providing for the deduction of contributions or gifts to a religious organization. War Revenue Act of 1917, ch. 63, § 1201(2), 40 Stat. 330. As this Court has noted, the "plain language of section 170 reveals that Congress' objective was to employ tax exemptions and deductions to promote certain *charitable* purposes" (emphasis in original). *Bob Jones University* v. *United States*, 461 U.S. 574, 581, n.11 (1983).[2]

Two years after the enactment of the charitable deduction provision, in 1919, the Internal Revenue Service ruled:

> The distinction of pew rents, assessments, church dues and the like from basket collections is hardly warranted by the act. The act reads "contributions" and "gifts." It is felt that all of these come within the two terms.
>
> In substance it is believed that these are simply methods of contributing although in form they may vary.

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[2] There is little question that the Code broadly reflects special consideration for religion; it is not just one more form of charitable organization. Over the seven decades since the tax exemption and the deductibility of contributions were established, a host of favorable provisions for churches and religious organizations and persons was added to the Internal Revenue Code. Some of these provisions took the form of exemptions from taxes. *See* Internal Revenue Code sections 504(c), 512(b)(14), 514(b)(3)(E), 1402(e), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), 3401(a)(9), and 4975(g)(3). (All references hereafter are to the Internal Revenue Code unless otherwise indicated.) Other provisions gave special elections to religion. Sections 403(b)(1)(D), (2)(C), 410(d), 415(c)(4), 6057(c). Still others provided for exemptions from general reporting requirements applicable to other entities (including other charitable entities). Sections 6033(a)(2), 6043(b)(2), 7605(c) and 7611.

The Service rationalized:

> Is a basket collection given involuntarily to be distinguished from an envelope system, the latter being regarded as "dues"? . . . It is believed that the real intent is to contribute and not to hire a seat or a pew for personal accommodation. A.R.M. 2, 1 C.B. 150 (1919).

Some fifty years later, the Service reiterated this ruling:

> Pew rents, building fund assessments and periodic dues paid to a church . . . are all methods of making contributions to the church and such payments are deductible as charitable contributions. Rev. Rul. 70-47, 1970-1 C.B. 49.

The Service has also recognized in another ruling that a genealogical research organization for a particular family may be tax-exempt as a religious entity under section 501(c)(3) because it served a religious purpose in the particular case and contributed to the "general public benefit." Rev. Rul. 71-580, 1971-2 C.B. 235. The Service has ruled that a specific bequest to cause Masses to be said for deceased family members is deductible as a charitable bequest for estate tax purposes. Rev. Rul. 78-366, 1978-2 C.B. 241. In still another ruling, the Service sustained the deductibility of membership fees paid to charitable organizations where the rights and privileges of membership "are incidental to making the organization function according to its charitable purposes . . . ." However, if membership carries with it "significant return benefits that have a *monetary* value," the deduction must be offset by such value. Rev. Rul. 68-432, 1968-2 C.B. 104 (emphasis added).[3] Revenue Ruling 76-185, 1976-1 C.B. 60, hammered home the rule that a contribution is deductible if the contributor does not receive a *financial* or *economic* benefit commensurate with money contributed. These rulings demonstrate that incidental or noneconomic return benefits to a contributor will not affect or diminish the deductibility of contributions.

[3] For example, concerts or lectures provided for contributions may reduce deductions by the monetary market value of the concerts or lectures.

In a limited number of cases the courts have further interpreted section 170 in a manner supporting the position of the IRS declared seventy years ago. The Tax Court has permitted the deduction of rehabilitation and repair expenses incurred to maintain a chapel that was a part of real estate owned by the contributor but was used as a parish church by the community. The court held that the scope of a charitable contribution was not to be "narrowly construed" and interpreted section 170(c) as placing its "emphasis on the character of the charitable donee and on the nature of the activities for which the contribution is made" rather than on the benefit to the contributor-owner of the property. *Estate of Philip A. Carroll,* 38 T.C. 868, 873-74 (1962). In the case of *White* v. *United States,* 725 F.2d 1269 (10th Cir. 1984), the Court of Appeals held that payments of transportation expenses and living expenses of a family member who served as a Mormon missionary were amounts deductible by the payor. The Court considered that the test was one of benefit to the church rather than to the payor or the family member. In that case payments were made directly to the family member in amounts set by the church.

The conclusions reached by the Courts below in the cases before this Court are directly at odds with the outstanding published rulings and judicial decisions cited above. Those conclusions have no basis either in the statute or regulations or in any other rulings of the Internal Revenue Service; they also lack judicial precedent as far as we can tell.

The Courts below placed controlling importance on the fact that the Church of Scientology set the fees paid for auditing. However, this is an irrelevant fact in light of the rulings and cases. Moreover it does not square with ordinary and customary definitions of the term "contribution" in English usage. The *Oxford English Dictionary,* Vol. I (Oxford 1971), provides a primary definition for "contribution" as the "action of contributing or giving as one's part to a common fund or stock." This authoritative dictionary makes it clear that contributions may be exacted or levied; they are essentially forms of transferring property from one

person to another. *Webster's Third New International Dictionary* (Merriam-Webster, Springfield, Massachusetts 1964), defines contributions primarily as a payment, tax or imposition, *i.e.*, "a payment imposed upon a body of persons . . . by civil . . . or *ecclesiastical* authority" (emphasis added). Similarly, *Black's Law Dictionary*, 297 (5th ed. 1979) defines "contribute" as to "lend assistance or aid, or give something to a common pu. ose; to have a share in any act or effect; to discharge a joint obligation." These usages lend no support whatever to the constructs of the Courts below.

More particularly, under section 170(a)(1) a deduction is allowed for "any charitable contribution." A charitable contribution is defined simply as a "contribution or gift to or for the use of . . ." an entity "organized and operated exclusively for religious . . . purposes." Section 170(c). The key statutory words are "contribution" *or alternatively* "gift." "Contribution" is not simply a synonym for "gift" even though the Courts below seem to equate the terms. We believe that the dictionary definitions of "contribution" are sound with respect to a church, synagogue or other religious organization. What is characteristic of the term when applied to these organizations is that contributions are jointly furnished by members or participants to support the organization. So used, "contribution" comports with both its dictionary meaning and the Service's interpretation in the rulings cited heretofore; thus, pew rentals, dues or building assessments involve contributions to joint funds for the support of the religious organization.

There is also nothing in section 170(c) or the case law heretofore that precludes a deduction for a charitable contribution simply because some intangible kind of benefit, is offered. This is particularly true if the benefit is religious, *i.e.*, spiritual rather than secular, economic and monetary. As the Tax Court has noted elsewhere, benefits from religious contributions are "merely incidental" to charitable benefits and "not significant return benefits that have a *monetary* value within the meaning of section 170"

(emphasis added). *Murphy* v. *Commissioner*, 54 T.C. 249, 253 (1970).

The Courts below erred in maintaining that religious services or benefits are measurable offsets to, or nullify, the charitable attributes of contributions. Both courts below concluded that fixed fees establish a "market" setting as distinguished from a "contribution" setting. Thus, in *Hernandez* v. *Commissioner*, 819 F.2d 1212, 1216, the Court noted that a payment is deductible "only if and to the extent it exceeds the market value of the benefit received." Similarly, a payment is not a contribution "if the return benefit is commensurate with the payment or if obtaining the benefit is reason for making the payment." *Id.* at 1219. In *Graham* v. *Commissioner*, 872 F.2d 844, 848, the Court observed that the "detached and disinterested motive" test is designed "to determine that no measurable, specific return comes to the payor as a quid pro quo for the deduction." The appropriate standard is to examine "the structure of the transaction, and not the type of benefit received." *Id.* at 849. The *Graham* Court finally observed that the value of the "quo" received by the taxpayers was easy to determine because the court need merely look to "the amount of money they were willing to pay for it in a market setting." *Id.* at 849-50. Unfortunately, the *Graham* Court failed altogether to indicate where the "market setting" for religious services was to be found. The phrase "market setting" more effectively camouflages than it elucidates the issue.

By focusing on the structure of the payments as an indication of an alleged market setting (and as providing proof of value), both Courts of Appeals enunciated standards which cannot be and have not been applied to payments for religious services. A market does not exist merely because a taxpayer has paid for religious services. Otherwise, all religious contributions could be nullified by "benefits" received in the "market" in the amount of payment simply by the fact of payment. The *Hernandez* decision requires that the taxpayer must prove that the payment exceeded the "return benefit," in which event the excess would be deductible. However, in the case of payments for religious services, the

taxpayer can never meet this burden of proof because there is no way to value religious services realistically, except by the kind of bootstrapping engaged in below. *Cf. Crosby Valve and Gauge Company* v. *Commissioner,* 380 F.2d 146, 146-47 (1st Cir.), *cert. denied,* 389 U.S. 976 (1967).

The Courts of Appeals below have engaged in reasoning that is clearly circular or tautological when they point to the taxpayer's payment as proof of value received in the form of religious services, where such services have no recognizable money or money equivalent value apart from the amount that the payor has paid. Religious participants do not shop for religious services based on the prices which churches, temples or synagogues may offer. Catholics do not attend Protestant churches because pew seats are cheap. Jews do not attend services in Buddhist temples that offer religious services with little or no fees. Neither Catholics nor Jews shop for the least expensive church or synagogue of their own religion. What the religious participant "buys" is a religious service of his belief and choice, and no administrative agency or court of the federal government can set a price for the spiritual benefit.

Finally, as the IRS's own rulings make very clear, a market for religious services does not arise because the structure and amount of the payments is predetermined by the church. Fixed fees only mean that the amount contributed to the church, within the meaning of section 170, is set by it, not the contributor. This does not cause a contribution, in whatever form, to be something other than a contribution. A.R.M. 2, *supra.* Rev. Rul. 68-432, *supra.*

The Courts below, including the Tax Court, delineated in great detail the accounting, bookkeeping and money practices of the Church of Scientology. These matters, however, have nothing to do with the cases. They serve only to cloud the controlling stipulations that the Church of Scientology is a religion and that "auditing" is a religious service. If they are intended to suggest that by practices of discounts and refunds the Church has established a commercial business, the observations contradict the stipulations. As the Court of

Appeals in the case of *Staples* v. *Commissioner,* 821 F.2d 1324, 1325-26 (8th Cir. 1987) discussed the contradiction—

> This court is bound to treat as conclusive and to enforce all fairly made and voluntary stipulations of fact. *Skeets* v. *Johnson,* 816 F.2d 1213, 1215 (8th Cir. 1987) (en banc). The tax court in *Graham,* we believe, ignored the fair impact of the government's stipulations. For example, the court observed—contrary to the stipulation that Scientology is a qualified church—that "[t]he Church of Scientology operates in a commercial manner in providing these religious services. In fact, one of its articulated goals is to make money."
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> * * *
>
> The stipulations, however, require that the religious nature of the Scientology activities at issue in these cases be recognized; *Graham* thus amounts to a holding that the deductibility under section 170 of payments relative to participation in bona fide religious practices will depend on the mechanism adopted by the church to solicit support from its members. Neither the tax court nor the government has cited a case in which a taxpayer has been denied a deduction for payments keyed to participation in strictly religious practices.

While the Church as a religious organization has a strong interest in money support, this is not peculiar to Scientology. All religious institutions must maintain religious personnel, buildings, and meet the expenses involved in religious services and general maintenance. No church or synagogue is oblivious to the need to secure funds.

In summary, the decisions below are unsound as a matter of English usage, the literal terms of the statute, legal and tax history, IRS rulings, case law, and logical assumptions. Religious services are not economic commodities measurable in dollars. Nor are they purchased in the marketplace.

II. A CONTEMPORANEOUS INTERPRETATION OF THE DEDUCTION PROVISIONS OF SECTION 170 BY THE IRS, SANCTIONED HERETOFORE BY THE COURTS AND APPLIED FOR MORE THAN SEVENTY YEARS, CANNOT BE OVERTURNED SIMPLY BY THE EXERCISE OF NEW LOGIC

This Court and almost every court that has considered the matter has repeatedly recognized that a contemporaneous interpretation of income tax laws by the Internal Revenue Service is entitled to great weight. Decades of practice following such interpretation cannot be overturned simply by the exercise of new, refined and sophisticated logic.

As Justice Holmes observed in an oft-quoted and meaningful dictum long ago, "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner* 256 U.S. 345, 349 (1921). More recently, in discussing the reach and policy of tax exemption, Chief Justice Burger emphasized the difference between "logical analysis" and "sensible and realistic" legal interpretations in the light of history, leaving little doubt as to his preference. *Walz* v. *Tax Commission,* 397 U.S. 664, 671 (1970). Justice Brennan made the same point perhaps even more strongly: "History is particularly compelling in the present case because of the undeviating acceptance given religious tax exemption from the earliest days as a Nation. Rarely, if ever, has this Court considered the constitutionality of a practice for which the historic support is so overwhelming." *Walz* v. *Tax Commission, op. cit.* at 681 (concurring opinion).

Amici have called the Court's attention to the outstanding unrevoked rulings of the Internal Revenue Service on the matters at issue in these cases. The long-stated policy of the Internal Revenue Service is that taxpayers may generally rely on published revenue rulings. As set forth in Revenue Procedure 78-24, 1978-2 C.B. 503, 504-05:

> Revenue rulings . . . are published for the information and guidance of taxpayers, Service officials and others concerned.

Id. at 3.01.

* * *

> Taxpayers generally may rely upon revenue rulings published in the Bulletin in determining the tax treatment of their own transactions and need not request specific rulings applying the principles of a published revenue ruling to the facts of their particular cases.

Id. at § 7.01(5).[4]

Under the income tax law, a long-standing administrative interpretation which applies to a substantially re-enacted statute is deemed to have received congressional approval, giving it the effect of law. *Commissioner* v. *Noel Estate,* 380 U.S. 678, 682 (1965) (regulations in effect for 36 years); *see also United States* v. *Correll,* 389 U.S. 299, 305-06 (1967); *Helvering* v. *Winmill,* 305 U.S. 79, 83 (1938) ("Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received congressional approval and have the effect of law"); *Universal Battery Co.* v. *United States,* 281 U.S. 580, 583 (1930); *Lykes* v. *United States,* 343 U.S. 118, 127 (1952).

The case of *Ostheimer* v. *United States,* 264 F.2d 789 (3d Cir.), *cert. denied,* 361 U.S. 818 (1959), is particularly analogous to the cases before the Court. In that case a 1915 ruling was reaffirmed in 1932 and 1955. In deciding that such administrative interpretations were "of great persuasion in deciding an issue of statutory construction," the Court declared that "'[a]n administrative interpretation such as this, so consistently followed over a long period of time, is entitled to great weight with the Court and there is a heavy burden upon the plaintiff to show that it is erroneous.'" *Id.* at 793. For the reasons stated above, the outstanding rulings of the Internal Revenue Service were and are plainly correct, not in error at all; the new logic of the Courts below reflects no necessary transformation of the law and does not

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[4] *See also* Rev. Proc. 72-1, 1972-1 C.B. 693; Rev. Proc. 69-1, 1969-1 C.B. 381; Rev. Proc. 62-28, 1962-2 C.B. 496; Rev. Rul. 54-172, 1954-1 C.B. 394.

represent that "great weight" needed to overcome historic "error."

In *United States* v. *Leslie Salt Co.*, 350 U.S. 383, 396 (1956), this Court upheld the Treasury's "prior long-standing and consistent administrative interpretation" and rejected the Commissioner's later construction of a tax statute:

> [A]dministrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful. . . . The practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are untried and new.

(quoting Justice Cardozo in *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294, 315 (1933)); *see also Central Illinois Public Service Company* v. *United States*, 435 U.S. 21 (1978).

In an opinion by Justice White announced as recently as June 6, 1988, the majority of this Court noted that Congress' failure to disturb a consistent judicial interpretation of a statute indicates "that Congress at least acquiesces in, and apparently affirms, that [interpretation]," *Monessen Southwestern Railway Company* v. *Morgan*, ____ U.S. ____, 56 U.S.L.W. 4494, 4496, (1988) (quoting *Cannon* v. *University of Chicago*, 441 U.S. 677, 703 (1979)). There the federal and state courts had—

> "held with virtual unanimity over more than seven decades that prejudgment interest is not available under the FELA" . . . Congress has amended FELA on several occasions since 1908. . . . Yet, Congress has never attempted to amend the FELA to provide for prejudgment interest. We are unwilling in the face of such congressional inaction to alter the long-standing apportionment between carrier and worker of the costs of railroading injuries. If prejudgment interest is to be available under the FELA, then Congress must expressly so provide" (footnotes and citations omitted).

The doctrine that a statutory construction and interpretation which has been applied for a long time cannot be readily overturned by new logic receives even more weight when the interpretation was rendered contemporaneously with the statute, as is the case here. *Fawcus Machine Co.* v. *United States*, 282 U.S. 375 (1931), sets forth the view that contemporaneous administrative construction of a statute represents the proper interpretation of the statute and congressional intent. In that case the Court found that earlier regulations, a "contemporaneous construction by those charged with the administration of the act, are for that reason entitled to respectful consideration, and will not be overruled except for weighty reasons." *Id.* at 378. *See also Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, 501 (1948); *United Shoe Machinery Corp.* v. *White*, 13 F. Supp. 97, 101 (D. Mass. 1935), *aff'd in part and rev'd in part on other grounds*, 89 F.2d 363 (1st Cir.), *cert. denied*, 302 U.S. 768 (1937).

Given the long-standing and consistent treatment of church membership dues and pew rents as charitable contribution deductions, the courts should defer to the legislative branch the decision whether to change the historic meaning of "charitable contributions" to religious institutions. "The primary responsibility for determining what should be included and excluded from income for tax purposes rests with Congress. If inequities result from the present method . . ., resort should be had to the legislative branch of the Government for appropriate relief." *Farmers Cooperative Co.* v. *Commissioner*, 288 F.2d 315, 324 (8th Cir. 1961) (consistent IRS ruling for over forty years).

In *Parks* v. *Commissioner*, 686 F.2d 408 (6th Cir. 1982), the Court rejected the Commissioner's request that the Court overturn a decision (*Dean* v. *Commissioner*, 35 T.C. 1083 (1961)), which treated a close corporation's interest-free loan to the taxpayer as excludable from the taxpayer's gross income. While the court found some merit in the Commissioner's argument for constructive income, the Court said the decision had been law for over twenty years

and had been relied upon by the taxpayers, and any change should be made by the legislature:

> A well-entrenched interpretation of tax law, even if logically assailable, should be changed by Congress, not the courts. The Supreme Court stated this principle as follows: "Courts properly have been reluctant to depart from an interpretation of tax law which has been generally accepted when the departure could have potentially far-reaching consequences. When a principle of taxation requires re-examination, Congress is better equipped than a court to define precisely the type of conduct which results in tax consequences."

Id. at 409 (quoting *United States* v. *Byrum*, 408 U.S. 125, 135 (1972)); *see also, Hardee* v. *United States*, 708 F.2d 661, 668 (Fed. Cir. 1983).

In deciding a parallel Scientology case also coming up from the Tax Court's *Graham* case, the Eighth Circuit Court of Appeals has held in *Staples* v. *Commissioner*, 821 F.2d 1324, 1327 (1987)—

> . . . regardless of the timing of the payment or details of the church's method of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of section 170.

The Service took this position more than seventy years ago. The interpretation then has lost none of its sense now. After the passage of many decades, a change in this law is a matter for Congress.

III. THE DECISIONS BELOW SERIOUSLY BURDEN THE FREE EXERCISE OF RELIGION BY SCIENTOLOGISTS BY DISCRIMINATING AGAINST THE CHURCH OF SCIENTOLOGY. IN SO DOING, THE DECISIONS VIOLATE THE FIRST AND FIFTH AMENDMENTS TO THE CONSTITUTION

The decisions below, and the actions of the Internal Revenue Service in pressing for those decisions in the face of outstanding contrary published rulings, discriminate against

the Church of Scientology. Accordingly, those decisions and actions violate the "free exercise" clause of the First Amendment and the "equal protection" clause of the Fifth Amendment. Furthermore, the kind of examinations conducted and evidence introduced by the Respondent in the trial record represents a clear example of that "excessive entanglement" in religious affairs which this Court has long disfavored and prohibited under the First Amendment.

The rulings of the Service (A.R.M. 2 and Rev. Rul. 70-47 in particular) recognize that religionists are entitled to deduct payments to churches notwithstanding that those churches specify the amounts to be paid for religious services and privileges. This is denied to contributors to the Church of Scientology by the decisions below.

The *Hernandez* Court recognized the discrimination indirectly (although denying it explicitly) when it observed that Revenue Ruling 70-47 might be wrong. 819 F.2d at 1227. The Court there started to distinguish the situations in the Revenue Ruling from that of Scientology by referring to the Internal Revenue Service view that "collective worship" is different from religious service of an "individualized nature." However, the Court found this distinction "irrelevant," and reverted simply to its position that a "mandatory price" destroyed the deduction. *Id.* This hardly suffices, for it leaves the discrimination intact: no deduction to Scientologists for "mandatory" contributions to the Church of Scientology; deductions to other taxpayers for "mandatory" contributions to their religions.

The *Graham* Court of Appeals also had "doubt the taxpayers have shown a burden on the right of free exercise." The Court noted "Any tax reduces the amount of money available to support the taxpayer's religion." 822 F.2d 844, 851. Notwithstanding some concern that its analysis was sound, the *Graham* Court found adequate reassurance for its view in the overriding governmental interest in "the maintenance of a sound and uniform tax system," (*id.* at 852) and in a "neutral and enforceable taxation system" (*id.* at 853). What was overlooked in the *Graham* opinion was the taxing of "mandatory" contributions to Scientologists while

allowing deductions under the rulings for every variety of "mandatory" contributions to other churches. This is hardly the maintenance of a "neutral" and "uniform" taxing system.

In terms of the burden imposed on free exercise, we may start with the well-known dictum of *McCullough* v. *The State of Maryland,* 4 Wheat. 316, 431 (1819), "That the power to tax involves the power to destroy." This Court has further noted, in the case of *Speiser* v. *Randall,* 357 U.S. 513, 518 (1958), that "speech can be effectively limited by the exercise of the taxing power." There should be little doubt that the free exercise of religion can similarly be limited "by the exercise of the taxing power" in a discriminatory manner. *Cf. First Unitarian Church* v. *Los Angeles,* 357 U.S. 545 (1958). Rates of tax in recent decades have varied from approximately 20% to 90%. Denial of a deduction results in the application of such rates to the contributions. The result is undoubtedly burdensome where the rate applies in an unwarranted, discriminatory fashion.

Both Courts below, as a consequence of their treatment of religion as an economic commodity and singular discrimination against Scientology, failed to recognize governing principles which this Court has pronounced repeatedly. "Certainly government may not lay a tax on either worshipping or preaching." *Walz* v. *Tax Commission,* 397 U.S. 664, 706 (1970) (Douglas, J., dissenting). The laws must be applied "to insure that no religion be sponsored or favored, none commanded, and none inhibited." *Id.* at 669 (majority opinion by Chief Justice Burger). The state "cannot make public business of religious worship or instructions, or of attendance at religious institutions of any character .... That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation...." Justice Black in *Everson* v. *Board of Education,* 330 U.S. 1, 26 (1947).

This Court has also made it clear that "excessive entanglement" in religious affairs, abjured by the First Amendment, will result from a "comprehensive, discriminating,

and continuing state surveillance." The state must accordingly avoid detailed examinations of religious activities, doctrines, and church records. *Lemon* v. *Kurtzman,* 403 U.S. 602, 619 (1971). The record in the Tax Court in these cases is replete with exactly these forms of constitutionally prohibited examination and entanglement. The recitations of factual detail in the opinions of both Courts of Appeals below expose the "pervasive monitoring of these church agencies by the secular authorities." *Id.* at 627 (Black, J., concurring); *cf. Hernandez* v. *Commissioner,* 819 F.2d 1212, 1215-19, 1222; *Graham* v. *Commissioner,* 822 F.2d 844, 846-47, 849.

The decision of the Internal Revenue Service generally to allow the deduction of contributions in whatever form to religious organizations but to disallow contributions to the Church of Scientology after a meticulous examination of the affairs, doctrines and records of that Church is a plain encroachment upon the free exercise of religion. We agree with petitioners that protection of all religious groups from the imposition of governmental orthodoxy by granting or denying tax benefits is compelled under the Constitutional religious clauses. Whether a church requires its parishioners to tithe, levies assessments on members, or sets a fixed fee or schedule of fees for participation in religious services is a matter for the church to decide. The methods used by religious organizations to solicit and collect funds necessary for their existence and well-being are not matters for state intervention. The government must not be able to tax disfavored forms of contribution to a disfavored religion.

CONCLUSION

The administrative agency charged with interpreting the income tax laws long ago held plainly and in essence that any form of contribution to a religious organization, irrespective of who determined the amount, was deductible. That ruling has been reiterated and reinforced for more than seventy years. Subsequent rulings have made it clear that deductions for contributions would be offset or reduced only by monetary values or market equivalents of monetary values provided to the contributors.

These interpretations over the decades have presently the force of law. They cannot be overturned by *ad hoc* judicial exercises of logic, which are premised on erroneous assumptions and standards as to the "monetary" value of religious services. Moreover, the administrators and courts may not dispense or deny tax deductions in a way which favors one religion and burdens another. The involvement of government in a detailed review, audit, examination and surveillance of church records, doctrines and practices is also Constitutionally prohibited.

The decisions below should be reversed.

Respectfully submitted,

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APPENDIX A

Birmington Jewish Community Council
Greater Phoenix Jewish Federation
Tucson Anti-Defamation—Community Relations Committee of the Jewish Community Council
Greater Long Beach and West Orange County Jewish Community Federation
Los Angeles Community Relations Committee of Jewish Federation-Council
Oakland Greater East Bay Jewish Community Relations Council
Orange County Jewish Federation
Sacramento Jewish Community Relations Council
San Diego Community Relations Committee of United Jewish Federation
San Francisco Jewish Community Relations Council
Greater San Jose Jewish Community Relations Council
Greater Bridgeport Jewish Federation
Greater Danbury Community Relations Committee of Jewish Federation
Greater Hartford Community Relations Committee of Jewish Federation
New Haven Jewish Federation
Eastern Connecticut Jewish Federation
Greater Norwalk Jewish Federation
Stamford United Jewish Federation
Waterbury Jewish Federation
Jewish Community Relations Council of Connecticut
Wilmington Jewish Federation of Delaware
Greater Washington Jewish Community Council
South Broward Jewish Federation
Greater Fort Lauderdale Jewish Federation
Jacksonville Jewish Community Council
Greater Miami Jewish Federation
Greater Orlando Jewish Federation
Palm Beach County Jewish Federation
Pinellas County Jewish Federation

Sarasota Jewish Federation
Atlanta Jewish Federation
Savannah Jewish Council
Metroplitan Chicago Public Affairs Committee of Jewish United Fund
Peoria Jewish Federation
Springfield Jewish Federation
Indianapolis Jewish Community Relations Council
South Bend Jewish Federation of St. Joseph Valley
Jewish Community Relations Council of Indiana
Greater Des Moines Jewish Federation
Louisville Jewish Community Federation
Greater New Orleans Jewish Federation
Shreveport Jewish Federation
Portland Southern Maine Jewish Federation—Community Council
Baltimore Jewish Community Relations Council
Metropolitan Boston Jewish Community Council
Marblehead North Shore Jewish Federation
Greater New Bedford Jewish Federation
Springfield Jewish Federation
Worcester Jewish Federation
Metropolitan Detroit Jewish Community Council
Flint Jewish Federation
Minneapolis Minnesota and Dakotas Jewish Community Relations Council—Anti-Defamation League
Greater Kansas City Jewish Community Relations Bureau
St. Louis Jewish Community Relations Council
Omaha Jewish Community Relations Committee of Jewish Federation
Atlantic County Federation of Jewish Agencies
Bergen County Jewish Community Relations Council of United Jewish Community
Cherry Hill Jewish Community Relations Council of Southern New Jersey Jewish Federation
Delaware Valley Jewish Federation

East Orange Metropolitan New Jersey Jewish Community Federation
Northern Middlesex County Jewish Federation
Raritan Valley Jewish Federation
Union Central New Jersey Jewish Federation
Wayne North Jersey Jewish Federation
Albuquerque Jewish Community Council
Greater Albany Jewish Federation
Binghamton Jewish Federation of Broome County
Brooklyn Jewish Community Council
Greater Buffalo Jewish Federation
Elmira Community Relations Committee of Jewish Welfare Fund
Greater Kingston Jewish Federation
New York Jewish Community Relations Council
Rochester Jewish Community Federation
Greater Schenectady Jewish Federation
Syracuse Jewish Federation
Utica Jewish Community Council
Akron Jewish Community Federation
Canton Jewish Community Federation
Cincinnati Jewish Community Relations Council
Cleveland Jewish Community Federation
Columbus Community Relations Committee of Jewish Federation
Greater Dayton Community Relations Committee of Jewish Federation
Toledo Community Relations Committee of Jewish Welfare Federation
Youngstown Jewish Community Relations Council of Jewish Federation
Oklahoma City Jewish Community Council
Tulsa Jewish Community Council
Portland Jewish Federation
Allentown Community Relations Committee of Jewish Federation
Erie Jewish Community Council

Greater Philadelphia Jewish Community Relations Council
Pittsburgh Community Relations Committee of United Jewish Federation
Scranton-Lackawanna Jewish Council
Greater Wilkes-Barre Jewish Federation
Providence Community Relations Committee of Rhode Island Jewish Federation
Charleston Jewish Community Relations Committee
Columbia Community Relations Committee of Jewish Welfare Federation
Memphis Jewish Community Relations Council
Nashville and Middle Tennessee Jewish Federation
Austin Jewish Community Council
Greater Dallas Jewish Community Relations Council of Jewish Federation
El Paso Jewish Community Relations Committee
Greater Houston Jewish Federation
Fort Worth Jewish Federation
San Antonio Jewish Community Relations Council of Jewish Federation
Newport News-Hampton Jewish Federation
Richmond Jewish Community Federation
Tidewater United Jewish Federation
Greater Seattle Jewish Federation
Madison Jewish Community Council
Milwaukee Jewish Council